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AMERICAN STATE TRIALS

A Collection of the Important and Interesting Criminal Trials which have taken place in the United States, from the beginning of our Government to the Present Day.

WITH NOTES AND ANNOTATIONS

JOHN D. LAWSON, LL.D.
EDITOR

VOLUME XIV

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TO

WILLIAM RENWICK RIDDELL,

LL.D., F.R.H.S., F.R.S.C.

Of Toronto, Canada.

JUSTICE OF THE SUPREME COURT OF ONTARIO

This volume is inscribed in recognition
of many years of warm friendship.

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PREFACE TO VOLUME FOURTEEN.

No greater contrasts can be found in the history of great crimes and great criminal trials than are illustrated in the assassins, *Charles J. Guiteau* (p. 1) and *Leon F. Czolgosz* (p. 159) and in the judicial proceedings that ended in their execution for the murder of two Presidents of the United States. No other historic tragedy ever produced such a vile, ridiculous and unheroic character as Guiteau, a low and disreputable politician, who, disappointed in his desire for a public office, takes his revenge in murder and then poses as the agent of the Almighty, commissioned to save the country from destruction. In his Recollections of an Alienist, Dr. Hamilton wrote: "At the time, I said, 'Guiteau is only a shrewd scamp with the plausibility of an Alfred Jingle in swindling boarding-house keepers and evading the payment of his debts; the visionary enthusiasm of Micawber or Colonel Sellers; the cant and hypocrisy of Aminidab Sleep or Uriah Heep; the ambition of Erastratus and the murderous manners of Felton, who assassinated the Duke of Buckingham, of whose crime the the killing of Garfield was an exact counterpart.' Like one of the murderers in Macbeth, he might have said:

> And I another,
> So weary with disasters, tugged with fortune,
> That I would set my life on any chance
> To mend it or be rid on it."

Czolgosz was a simple, uneducated, foreign youth, an ordinarily industrious workman, without bad habits and honest in his relation with fellow men, but unhappily

listening to the advocates of anarchy and becoming imbued with their doctrines, until morbidly brooding over the alleged wrongs of his class and persuaded that anarchy was the only remedy, determined to destroy the President because he was persuaded that anarchy could never make any headway as long as the great mass of people loved the head of the State as they did President McKinley. Why the notorious Emma Goldman, whose teachings inspired his crime, was not put in the dock with him is hard to explain, unless it was that the laws of New York were defective in this respect. There certainly was a good and sufficient precedent in the trial and conviction of the Chicago Anarchists only 15 years previous. (12 Am. St. Tr., p. 1.)

The defense in both trials was insanity, though Guiteau dishonestly and Czolgosz sullenly, denied the truth of the plea made for them by their counsel. What is insanity from a legal standpoint? Except in a few States, the law is adapted to protect the public against the man or woman who has made himself a self-declared judge, jury and executioner for the redress of injuries to himself or some near relative. Nevertheless, criminals in all parts of the United States escape punishment not because of their legal insanity, but through the emotional insanity of judges and jurors. The history of insanity in criminal courts has a place here. The common law refuses to punish an insane man for acts committed by him while in that condition. It is often argued that as the object of punishment of criminals is to protect society, madmen who commit crime should be treated like mad dogs; but the law is otherwise. It being then only necessary for a criminal to prove himself insane in order to go free, the defense of insanity has become a favorite one when all other defenses and excuses

have been found wanting. And it has become a difficult question for the courts to decide. "We are not physicians," exclaim the judges, "nor can we look into the person's brain, and this being so we must have a legal test of insanity." And what that test should be has bothered the courts not a little. Lord Hale who tried some of the first cases in which the "insanity plea" was set up, thought that if the prisoner had as much sense as an ordinary four-year-old child, he was a fit subject for punishment. This was called the "child test" and was followed by a good many judges until about 1724 when Chief Justice Tracy introduced a new test. "The man who is to escape punishment for his crimes," said he, "must be a man that is totally deprived of his understanding and memory and doth not know what he is doing no more than an infant, than a brute or a wild beast." Finally in 1840 a looney pot-boy named Oxford tried to kill the Queen as she was taking a drive one summer afternoon. Denham, C. J., in charging the jury told them that the question was whether the prisoner knew the right and wrong of the act he was committing; if he did he was responsible; if he did not he was not responsible. This is called the "right and wrong" test and is the law in England and in nearly all the states. In New Hampshire and a few others, the courts say that there ought to be no legal test of insanity; that the question must simply be, was the man's insanity the cause of his committing the crime? This is the "medical test" and as it is substantially handing the whole matter over to the doctors to settle, it is very popular with and much advocated by that profession. In Kentucky a peculiar idea has taken possession of its courts. It has been aptly said by an English judge that there are three powerful restraints existing, all tending to the assist-

ance of the person who is laboring under a temptation to commit a crime—the restraint of religion, the restraint of conscience and the restraint of law. But in Kentucky the temptation itself is held a legal excuse. Their courts recognize what they call "moral insanity"; that is to say, the plea of "I couldn't help it; I had an irresistible impulse to do it," is accepted as an excuse for a criminal act. If there happens to be a woman in the case, the defense itself becomes irresistible. Such a doctrine has no place in the common law of England or in the jurisprudence of all those states where the "right and wrong" test prevails. "The law," said another English judge, "does not acknowledge the doctrine of an uncontrollable impulse, if the person was aware it was a wrong act he was about to commit. A man might say he picked a pocket from some uncontrollable impulse and in that case the law would have an uncontrollable impulse to punish him for it." And so said the Supreme Court of North Carolina where an astute counsel attempted to clear his client on the "moral insanity" theory.

"The law does not recognize any moral power compelling one to do what he knows is wrong. 'To know the right and still the wrong pursue' proceeds from a perverse will brought about by the evil seductions of the evil one, but which nevertheless, with the aids that lie within our reach as we are taught to believe may be resisted and overcome; otherwise it would not seem to be consistent with the principles of justice to punish any malefactor. There are many appetites and passions which by long indulgence acquire a mastery over men more or less strong. Some persons indeed deem themselves incapable of exerting will sufficient to arrest their wrong-doing, speak of them as irresistible and impotently continue under their dominion. But the law is far from excusing criminal acts committed under the impulse of such passions. To excuse one from criminal responsibility the mind must be insane. The accused should be in such a state from mental disease as not to know the nature and quality of the act he was doing, or if he did know it that he did not know he was doing what was wrong; and this should be clearly established. This test, a knowledge of right

and wrong, has long been resorted to as a general criterion for deciding upon legal accountability and with a restricted application to the act then about to be committed, is approved by the highest authorities. If the prisoner knew what he did was wrong, the law presumes that he had the power to resist it against all supernatural agencies, and holds him amenable to punishment."

Another writer has well said:

"If the unlawful act of the prisoner is simply a lesion of the will, moral insanity, if such persons are to be deemed irresponsible —fit objects for Bedlam but not for punishment—our jails should be thinned and lunatic asylums multiplied. But it is the duty of a Christian and a rational being to keep down these unruly passions, and the physician who contends that man has no free will and cannot control his ungovernable appetites, seems as unsound in his theology, as erroneous in his law. The reader of his Bible dare not admit that intense malevolence alone, even without ground or provocation, actual or supposed, is of itself an unfailing proof of insanity, or that a man is mad merely because he is desperately wicked. Reason and religion teach us to reject the modern medical code, fashionable and favorable to our corrupt nature, though it be, that all are insane into whom, to judge from their deeds, Satan has entered; that the more terrible the crime, if perpetrated without apparent motive, the more conclusive is the existence of the malady. To such paradoxes the law of England cannot venture to listen. The law cannot tolerate the doctrine of making the crime itself proof of irresponsibility, without inflicting the greatest individual injustice and undermining the safeguards of society, without proclaiming practical immunity to such wretched beings as Greenacre, Gleeson, Wilson and Manning; to all, in short, who show the mind diseased by inflicting horrors in the newest shape, and inventing fresh modes of ghastly murder."[1]

The charge of Judge Cox to the jury in the Guiteau trial is a masterly exposition of the "right and wrong" test which is the law of the Federal Courts. This asks the jury but one question: Did the prisoner know the nature and quality of his act and that it was wrong? i. e. contrary to law? Medical science asks: Was he at the time he committed the act a victim of mental disease or medical unsoundness? In the Guiteau trial, the great weight of medical testimony declared him sane,

[1] Modern State Trials, W. C. Townsend, London, 1850.

according to the "right and wrong" test. In the Czolgosz trial the experts for both prosecution and defense declared him sane by both the legal and the medical tests.

Great was the indignation against the assassin of President Garfield by the people of Washington. General Sherman felt compelled, in the first days after his incarceration, to send a considerable military force to guard the jail. And before and during his long and weary trial he was attacked several times by would-be "avengers." Sergeant Mason, one of his guards, fired a rifle ball into his cell, narrowly missing him, and a substantial farmer named William Jones, one afternoon rode up behind the prison van and attempted to shoot him while he was being conveyed from the court room to the jail. What would have happened had the jury disagreed or had they found him insane? Doubtless he would have been lynched.[2]

Czolgosz was for a time in danger, also. "I never," says an eye-witness to the shooting, "saw such an ugly crowd, and had it been led,it would have broken into the Temple and taken him away from the few people there and lynched him."[3] But the vigilance of the Buffalo authorities, their quick action in putting the criminal beyond the reach of reporters and sensational news-

[2] A story told to the editor ten years after the tragedy is of interest. The narrator was an old soldier of the civil war where he served as a captain of cavalry. "I was one," he said, "of 100 members of Gen. Garfield's command in the war who pledged themselves by a secret oath that Guiteau should not escape death. A delegation of us drawn by lot and serving for a week at a time were in the court room every day of the trial. On the day the jury were to return their verdict twenty-five of us were present, each with a loaded revolver in his pocket. Had the verdict been either the prisoner is insane, or the prisoner is not guilty, that very instant twenty-five bullets would have pierced the carcass of the wretch."

[3] General Babcock, p. 179.

mongers and the firm belief of the citizens that he would have a speedy and satisfactory trial, soon removed any apprehensions of this kind.

The authorities in Washington were as lax as those of Buffalo were vigilant. No sooner was Guiteau jailed than he was permitted to issue an address to the American people. And all through the months of his confinement and trial, reporters and anybody curious to see him were admitted without limit; they came in crowds and his daily interviews and messages to the public were conveyed to every breakfast table until the scaffold closed his mouth. But not a single person except the officers of the Government, the experts appointed to examine him and his counsel—not one reporter even—caught even a glance of Czolgosz until he appeared in the court-room, or were permitted to speak to him until he passed into the custody of the sheriff to be taken to Albany to be hanged. To the District Attorney the credit for this was due. His course likewise in the permission to the experts for both the State and prisoner to freely meet and consult together and each obtain the same personal knowledge of the prisoner's mental condition, is highly to be commended. Its result was the complete agreement of all of them as to the prisoner's sanity. This, while it is the Continental method, was a new departure in the United States. It was thought of in the Guiteau trial, where each side retained its own experts who gave their opinions in accordance with the requirements of the party that paid them. And not only these professional witnesses, but the prisoner's "sisters, his cousins and his aunts" and anybody who had ever seen or talked to him, were allowed to take the stand and give their opinions as to his state of mind.

The Counsel for the Government in the Guiteau trial

were all able and distinguished members of the Bar. Yet the conduct of the prosecution is open to much criticism. Hardly had the testimony begun before they began to show the differences between the "stalwart" and "half-breed" republicans, a perfectly irrelevant matter and one not for their side to go into. To prove the killing and then rest was the proper course.[4] And there was a marked lack on their part of that official dignity that is characteristic of the English Public Prosecutor and which was so happily displayed in our early political prosecutions, as carried on by those great lawyers Rawle, Bradford, Randolph and Wirt, and whose careful and courteous demeanor towards their opponents is illustrated in several trials in this series.[5] Mr. Porter's cross-examination of Guiteau was well done, as it served to impress the jury with his conceit, untruthfulness and hypocrisy. But his closing speech is mainly a mass of vituperative retorts between himself and the prisoner, in which both employed the most virulent terms they could command. A state prosecution should be conducted with dignity and without resort to personal altercation with and vituperation of a prisoner, no matter how vile he may be.

Guiteau's counsel were his brother-in-law, a third-class lawyer of somewhat his type, and his wife (who, though not admitted to the bar, was permitted by the Court to act as though she were), a disgraced attorney from another State, and himself. The only reputable member of the bar retained by him, retired from the case after a few days' experience.

In preparing for the Czolgosz trial, the Bar Association of Buffalo took the lead, and through its President

[4] See 10 Fed. Rep. 200.

[5] See for example the Trial of Fries, 11 Am. St. Tr. p. 1.

obtained the appointment of his defenders—for the culprit was too poor to employ counsel for himself—two of the oldest, most respected and most learned lawyers of the county, both of whom had served on the Supreme Court of the State. And the State was represented by a prosecuting attorney whose highest aim was that the prisoner should have all the constitutional rights to which he was entitled and that complete justice should be done. In such hands the conduct of the trial was well nigh faultless. It was not a fight, a duel, a game in which each side was straining every effort to win, but was a sober, deliberate and thorough judicial investigation of a great crime. On the trial Czolgosz's attitude was one of complete indifference. Never once during the trial or afterwards, did he exhibit any of the mannerism or boastful displays as Guiteau did. He made no complaint of personal wrongs or persecution such as Guiteau was constantly making; he never showed once, as Guiteau did constantly, his satisfaction at being the central figure in a great judicial function, the observed of all observers, nor did he even once endeavor to simulate mental disease as Guiteau's conduct on his trial indicated as his scheme. When called upon to plead, he refused to answer,[6] and when he finally said the word "guilty" the judge refused to receive the

[6] Compare the action of the Court with the old common law procedure when a prisoner on arraignment stood mute and refused to plead. The judgment rendered was called the *peine et morte* and was as follows: "That the prisoner be remanded to the prison from whence he came and put into a low, dark chamber and then laid on the bare floor, naked, unless when decency forbids. That there be placed upon his body as great a weight of iron as he could bear and more; that he have no sustenance save only on the first day, three morsels of the worst bread; and on the second day three draughts of standing water that should be nearest the prison door; and in this situation should be alternately his daily dish until he died or answered".

plea and ordered a plea of "not guilty" to be recorded.

The trial was attended neither by delay nor harassed by the trivial technicalities of the law, so common in trials for murder in the United States. A jury was procured, the evidence heard, the speeches to the jury and the charge of the Judge and a verdict of guilty rendered in fewer hours than it took weeks to convict Guiteau. Czolgosz's counsel did everything that an honest lawyer could do for a client. Their cross-examination of the witnesses was sharp and searching and in their addresses to the jury they said all that could be said in his favor. None of the devices and tricks of the ordinary criminal lawyer were resorted to by them. They made no motion for a new trial or in arrest of judgment; they asked for no appeal to another Court; they did not attempt to have the case carried through tribunal after tribunal on a host of technical questions which their knowledge of the criminal law might easily have suggested. As sound and learned lawyers they knew that there was no just ground for such subterfuges, and as men of good sense and good citizens they scorned to resort to a deliberate imposition upon the higher courts simply for the purpose of delaying the punishment of the assassin. What a contrast to the Guiteau trial!

In one of the leading journals of the day, the conduct of the Guiteau trial was summed up thus:

"Was there ever before in a tribunal of enlightened people such concentrated and accumulated disgrace and real cause for shame? A vituperative criminal, whose impudence and indecency could be equalled only by his fluency and keenness of perception and repartee; a hissing, jeering and applauding audience; perpetually wrangling counsel; all three antagonistic forces often talking and fighting at once; with a judge who, to all appearance was utterly inadequate to manage or control either—such was the trial of an unprecedented criminal, for an unpardonable crime, which for ten weeks disgraced this country and made a shameful spectacle for the whole world. Who, that day after day listened to loud and vengeful

shouts of the prisoner, to the bickering and quarrelling of the lawyers, could believe that this trial could ever mount to a climax that could, at last, simply express dignity and law"?[7]

For this the presiding Judge was largely responsible.[8] He was a good lawyer, a gentleman of the old school, of benevolent temperament, but too mild and long-suffering for such a contest of which he was to be the arbiter. He was unable to even preserve order in the court-room, and marks of approval and disapproval came from the audience without rebuke. The prisoner, as it was said at the time, cared no more for the Judge's gentle cry of "silence" than he did for the fly he brushed from his nose. A strong Judge— like Cockburn, who tried the Tichbourne Claimant—would have gagged him or removed him from the courtroom, as he had a lawful right to do, and Judge Cox was much criticized for his failure

[7] The Independent, Feb. 9, 1881.

[8] "Such elements as enter into the 'makeup' of Judge Cox are rarely seen in any man, north or south, who has achieved success or eminence. Said one who knows him well, 'I have never seen any man really eminent who had so little self-consciousness. Judge Cox is the most unpretentious man I ever knew. He assumes nothing.' Judge Walter Cox was born in Georgetown and is by birth, association and training a real son of the District of Columbia. Inheriting a large fortune from his father, he had all the incentives to idleness usually born of opulence; but though he lives in great elegance, and entertains with large hospitality, he has been all his life one of the hardest of workers. Standing in the foremost rank as a lawyer, he has been for years at the head of the Law school of Columbia University, Washington. In addition to a pressing law practice, three evenings of the week, for many years, have found him in his place as the instructor of the intelligent, and in many cases, hard-worked young men, who with other employments by day, studied law with Judge Cox of nights. Judge Cox is a slight, delicate-looking man, whose strong features and fine head indicate a mentality more potent than any mere physical force could express. He is somewhat bald, has mild blue eyes, a Roman nose and an expression entirely benevolent. Said a friend: 'I cannot see how a man can amount to so much and assert himself so little.' This was the quality that brought down upon him so many anathemas during the Guiteau trial." The Independent, Id.

to do this. But a great authority on criminal law has defended his course in this respect, saying:

"There can be now no question that giving Guiteau full liberty in the court-room greatly conduced not only to the promptness and early unanimity of the action of the jury, but to the universal approval with which that verdict has been met. I confess that when the prosecuion opened I had much doubt whether a conviction could be secured; and I believe that the general sentiment then was that the case was on the border-line and that the jury could not be expected to agree. This feeling, however, was gradually dispelled by Guiteau's course during the trial. Undoutedly he showed great vanity and great ignorance, so far as the higher conditions of knowledge are concerned. But he showed abundantly that he acted in the tragic homicide perpetrated by him with a motive, which, however preposterous and villainous, was nevertheless as sane as are the motives of other criminals who take human life to gratify personal or political revenge and with a full knowledge of the unlawfulness of his act. He proved on the trial that he was as sane as are the greater body of ruffians by whom life is taken; and he proved also that if the defense of insanity was good in his case, there are few cases of atrocious crimes in which it could not be sustained. Had he been removed from the court-room or gagged, as was proposed, this condition would not have existed. Even if convicted there would have been many who would have felt that the case was still one of doubt, and there would have been few who would have regarded the conviction and execution with entire approval."[9]

There have been several trials for piracy and murder on the high seas in this series, not only in Colonial days, but later, but none are more interesting in their facts than that of *Bird and Hansen* (p. 232). Yet the chief reason for its inclusion here is that it is the first capital conviction under the U. S. Constitution. And no delay in disposing of the criminal marred the record of this prosecution. Captain Bird was put on trial at the end of the first week of June, and on the last Friday of the same month, after a most fair trial and an appeal to President Washington, who then had his residence in New York, he was hanged.

The guilt of the *Kennistons* (p. 237) was believed in

[9] Dr. Francis Wharton, in 10 Fed. Rep.

by the whole community, and they owed their acquittal, though unquestionably innocent, to the marvelous cross-examination and skillful presentation of the case to the jury by Daniel Webster. Unfortunately the reports of the trial, which have been preserved, do little to show either. Major Goodridge's motive in making public his dramatic story has never been known, but he left the State very soon, a disgraced man. Twenty years afterward, Mr. Webster was traveling in the western part of New York; he stopped at a tavern and went in to ask for a glass of water. The man behind the bar exhibited great agitation as the traveler approached him and when he placed the glass before Mr. Webster his hand trembled violently, but he did not speak. Mr. Webster drank, turned without saying another word and reentered his carriage. The man was Goodridge.[10]

William Lloyd Garrison (Trial of, p. 291), in an abolitionist newspaper in Boston violently attacked a Yankee ship-owner, in whose vessel some slaves had been carried from Maryland to Louisiana. He described them as being chained below decks, suffocating for want of air, without water and half starved and beaten cruelly when they complained. As a fact they were carried as well as ordinary emigrants. Indicted for libel, he was totally unable to prove his statements and was, of course, convicted and sent to prison.

Mr. Garrison, in the next issue of his paper, published the names of the jurors and "damned their names to everlasting fame." He regarded his trial as a mockery of justice; he maintained that liberty of the press had been assailed in his prosecution; that the Baltimore press in not protesting against it showed their "abject

[10] Curtis. Life of Webster, vol. 8.

servility, their craven spirit, their cormorant selfishness, their stagnant quiescence and their fear of the Judge, the loss of an advertisement, or the withdrawal of a subscriber." He violently attacked the Judge, saying:

"His frowns cannot intimidate me or his sentence stifle my voice on the subject of African oppression. He does not know me. So long as a good Providence gives me strength and intellect I will not cease to declare that the existence of slavery in this country is a foul reproach to the American name; nor will I hesitate to proclaim the guilt of kidnappers, slave abettors or slave owners, wheresoever they may reside or however high they may be exalted. I am only in the alphabet of my task; time shall perfect a useful work. It is my shame that I have done so little for the people of color; yea, before God I feel humbled that my feelings are so cold and my language so weak. A few white victims must be sacrificed to open the eyes of this nation and to show the tyranny of our laws. I expect, and am willing, to be persecuted, imprisoned and bound for advocating the rights of my colored countrymen; and I should deserve to be a slave myself if I shrunk from that duty or danger."

During his imprisonment he spent most of his time preparing anti-slavery addresses which on his release he delivered to audiences from Baltimore to his home in Massachusetts. By the Abolitionists he was regarded as a martyr in a righteous cause, and by his enemies he was regarded as a "convicted felon." In the other abolitionist newspaper, *The Liberator,* he said in the issue of January 15, 1831:

"In advertising the conduct of Mr. Todd and Capt. Brown in the affair of the *Francis*, I was actuated by no personal hostility. If any of my warmest friends or any other of my fellow-townsmen had been implicated in this or a similar transaction, they would have felt the same scorpion lash. In the publication of my strictures I was governed by the following motives: 1. A sense of duty as an advocate of freedom and a hater of tyranny and of all its abettors. 2. A desire to evince to the southern people, that in opposing slavery I disregarded all sectional feelings; and that a New England abettor was as liable to reprehension as a Maryland slave-holder. 3. A belief that the publication would ever afterward deter Mr. Todd from venturing into the domestic slave-trade; and that it would be a rod over the backs of New England mer-

chants generally. Having proved on my first trial, my main charges —viz: that the *Francis* carried away the slaves, and even 13 more than I had stated—that the ship was owned by Mr. Todd and that he was privy to the transaction—I determined to incur no expense and to give myself no trouble, in relation to the second suit. I knew that my judges must be men tainted with the leprosy of oppression with whom it would be useless to contend—men morally incapable of giving an impartial verdict from the very nature of their pursuit. And here let me observe, *en passant*, that I do not say that a *packed jury* has convicted me, yet knowing as I do how juries are selected in Baltimore, and recognizing also some of my condemners, I consider my trial as having had all the formality, but none of the substance, of justice. I do not care whether the slaves were bought expressly for the New Orleans market or for Milligan's own use, it does not alter the aspect of the affair. If they were to be sold they might get a better—they might get a worse, master than Milligan. They are disposable property, and he who bought them to make money would assuredly sell them for the same reason whenever an opportunity presented itself. To say that they were not intended for public sale is a contemptible quibble. They were slaves, the creatures of an absolute despotism; they were human beings entitled to all the privileges and enjoyments of liberty, and no man could assist in their oppression without participating in the guilt of the purchase. I regret that New England men were engaged in the inhuman traffic, but not that I exposed them to public censure. With regard to the truth of my allegation that chains were used on board the *Francis*, it could not be substantiated except by summoning the crew. Generally speaking, irons are inseparable from the slave trade; nor is this usage a grievance in the traffic. But I am now disposed to believe that no chains were used on board the *Francis*.

The decision of the Court upon my trial forms the paradox of paradoxes. The law says that the domestic slave trade is a legal business and no more criminal than the most innocent mechanical or commercial pursuit; and therefore, that any man may honestly engage in it. Yet if I charge an individual with following it, either occasionally or regularly, I am guilty of 'a gross and malicious libel,' of 'defaming his good name, fame and reputation,' of 'foul calumny and base inuendo,' with sundry other law phrases as set forth in the indictment! So much for the consistency of the law! So much for the equity of the Court! The trial, in fact, was not to ascertain whether my charges were true, but whether they contained anything disreputable to the character of the accused; and the verdict does not implicate or condemn me, but the law.

The hat-making business, for instance, is an authorized trade. Suppose I were to accuse a man of making hats and should believe and publicly declare as my opinion that every hat-maker ought to be imprisoned for life, would this be libelous? It is my belief that every distiller or vender of ardent spirits is a poisoner of the health

and morals of the community, but have I not a right to express this belief without subjection to fine and imprisonment? I believe, moreover, that every man who kills another, either in a duel or a battle, is in the eye of God, guilty of his blood; but is it criminal or punishable to cherish or avow such an opinion? What is freedom of thought or freedom of expression? It is my right—and no body of men can legally deprive me of it—to interrogate the moral aspect and public utility of every pursuit or traffic. True my views may be ridiculous or fanatical, but they may also be just and benevolent. Free inquiry is the essence, the life-blood of liberty, and they who deny men the right to use it are the enemies of the republic."

The trial of the New York Sheriff, *Hubbard* and the jailer, *Bell* (p. 299), in 1815, clearly vindicated the right of a lawyer to visit his client in jail. The Court ruled rightly that every court of record has authority to control her officers; that the right to employ and consult with counsel is one guaranteed to every man by the constitution and that the affidavits of the sheriff and jailer did not, in this particular case, sustain the fear of escape or fraud on which the refusal to permit the attorney to see his client had been based. The speech of the Recorder in the New York Court of General Sessions is worthy of note and the judgment of the Court in favor of the attorney, McClelan, is to be commended on principle.

The crime of *Grace Lusk* (p. 316) was apparently the result of what has frequently been called a "brain storm." Her lawyers made a strong plea for her acquittal of the murder of the wife of her paramour, on the basis of hereditary insanity. There seems little doubt that she was temporarily out of her mind when she shot Mrs. Roberts, but the law does not take cognizance of temporary insanity and it is not a good defense for murder. The accused woman in this case represented a certain class of modern, overeducated women of nervous, psycopathic type. After being graduated at a leading university and serving on an important educational

commission to Europe, she found teaching in a small city in Wisconsin somewhat unexciting. Being thrown with a wealthy and prominent man of middle age, Dr. Roberts, she fell violently in love with him and carried on a clandestine and somewhat vulgar intrigue that included trips to hotels in Chicago and Milwaukee. The doctor seemed finally to be tired of the affair and Miss Lusk, desperate and partially disillusioned, tried to force him to divorce his wife and marry her to restore her good name. Finally she persuaded Mrs. Roberts to come to her boarding-house and insisted that the wife should relinquish her husband. A violent quarrel ensued and procuring a revolver, which she had been keeping in her possession for some time, Miss Lusk shot and killed Mrs. Roberts. Although she claimed at the trial that she remembered nothing about the shooting, the jury found her guilty and sentenced her to prison for a long term. Her vicious attack on the prosecuting attorney after sentence was pronounced, led to a special examination at the order of the Court as to her sanity. A medical commission reported, however, that she was quite sane and the sentence was affirmed and carried out. The speeches of the attorneys and the charge of the judge to the jury are interesting from the viewpoint of insanity as a plea for the acquittal for murder.

The trial of *James Dalton* (p. 492) for False Pretense in the matter of securing three tubs of butter from a New York ship-owner, in 1823, is an illustration of the intricacies of the commercial criminal law. Dalton was clearly guilty but his lawyers won him a new trial by contending successfully, in the opinion of the Court, that a false statement or pretense, in order to be punishable, must be the sole inducement for the parting of property. As the ship-owner testified that he would not

have trusted Dalton *on* the false pretenses *alone*, and as the motive, which in addition to the false pretense, operated on the mind of the seller when he gave credit to Dalton, may have constituted part of the *res gesta,* the Court ruled in favor of a new trial.

The *first* (p. 505) and *second trials* (p. 530), in 1824, of *Joseph Buckingham,* editor and publisher of the *New England Galaxy* of Boston, for libel, are interesting examples of early nineteenth century procedure in such cases. The first trial in the Municipal Court of Boston resulted in a partial conviction of Buckingham, but an appeal was successful. The second trial ended in his having to serve thirty days in jail and pay all the costs of the prosecution. The ruling of the trial Judge that the truth of the libel was admissible to rebut malice in the cases only where the publication was made in the public interest, conformed to the law of Massachusetts by which the truth of the words used was no justification in a criminal prosecution for libel. As the libel had to do with the conduct of the Russian Consul at Boston at a dancing assembly, there could be no claim of public interest in the matter.

Isaac Cotterall and his chum (p. 548) should have been indicted for breaking jail and not for arson. Their main intent was not to burn the place but to get out of it. An English sailor on a ship laden with rum, sugar and cotton (and sailors have always had a weakness for the first two articles) in the dead of night bored into one of the barrels with a gimlet, but when he tried to stop up the hole he had to light a match which ignited the liquor, destroying the ship. Indicted for arson the Court held him not guilty. He had intended to steal the rum but he had not intended to set the ship on fire. The alleged crimes of both him and Cotterall were simply

the result of another crime that they intended to commit. For breaking jail, as it is popularly called, is a crime. The poet who remarked that stone walls do not a prison make, nor iron bars a cage, was right, for people so often get free of them that the law has had to supplement bolts and locks with a heavy penalty for evading them. Such efforts are in legal terminology, either escape, prison breach or rescue. Where he effects his freedom himself without force (as Napoleon III did from the Fortress of Ham), it is an escape; when he breaks out with force, as where he breaks the bars or locks or digs a tunnel, as did Dumas' Edmond Dantes in the Chateau D'If, it is a prison breach, and where it is effected through assistance from the outside, as were the Fenian prisoners in the Birmingham jail, it is a rescue.

A somewhat peculiar incident of these offenses is that it will not save him that is perfectly innocent of the charge on which he was imprisoned. A good many years ago, the soldier-poet of Kansas permitted the editor to print in a little volume on the criminal law, this very clever version in rhyme, of a Supreme Court decision on this point.

STATE VS. LEWIS.

(19 Kas. 266.)

Law-Paw-Guilt-Wilt.

When upon thy frame the law
Places its majestic paw,
Though in innocence or guilt,
Thou art then required to wilt.

The defendant while at large
Was arrested on a charge
Of burglarious intent,
And direct to Jail he went.

But he somehow felt misused
And through prison walls he oozed,
And in some unheard of shape,
He effected his escape.

Mark you now, again the law,
On defendant placed its paw
Like a hand of iron mail,
And resocked him into jail.
Then the Court met and they tried
Lewis up and down each side,
On the good old-fashioned plan;
But the jury cleared the man.

Now you think that this strange case
Ends at just about this place.
Nay, not so. Again the law
On defendant placed its paw.
This time takes him round the cape
For effecting an escape.
Lewis tried for this last act
Makes a special plea of fact.
"Wrongly did they me arrest,
As my trial did attest.
And while rightfully at large,
Taken on a wrongful charge,
I took back from them, what they
From me, wrongly took away."

The Prisoner's Lawyer.

As a matter, Sir, of fact,
Who was injured by our act?
Any property or man?
Point it out, sir, if you can.

Can you seize us when at large
On a baseless, trumped up charge,
And if we escape, then say,
It is crime to get away,
When we rightfully regained
What was wrongfully obtained?

The State's Lawyer.

When the State, that is to say,
We, take liberty away,
When the padlock and the hasp
Leaves one helpless in our grasp,

It's unlawful, then, that he
Even dreams of liberty;
Wicked dreams that may in time
Grow and ripen into crime.
Please the Court, sir, how can we
Manage people who get free?

The Court.

We don't make law, we are bound
To interpret it as found.
The defendant broke away,
When arrested he should stay.[11]

Such a sordid and mercenary crime as that of the murder of the elderly Mrs. Griswold of Burlington, Vermont, in 1866, by *John Ward* (p. 553), justly deserves to be execrated and severely punished. It shows for what little gain or recompense men of desperate character will commit atrocious crimes against persons whom they have never seen before, much less received injuries from. In this case the murderer, Ward or Lavigne, was a man of intelligence, but of thoroughly vicious and debased character. Associated in the charge against Ward, as an accessory to the murder, was the murdered woman's son-in-law, Potter, who was accused of instigating the crime and purchasing the services of Ward and his gang. The case has many interesting features of law and procedure, although the addresses of the counsel on both sides, to the jury, have not been preserved. The Judge's charge is brief but to the point and is a good illustration of the criminal law of that day. Before his execution, Ward made a full, but probably not entirely trustworthy, account of his life of crime and a confession of his guilt.

Has it come to this, in the Republic that Washington founded and the Democracy that Jefferson saw and

[11]Eugene F. Ware.

which he dreamed would, in a century, ripen into a greater and more complete freedom, that today a modern poet can write:

> Throned high upon a soap-box Demos rules,
> And mumbles decalogues: Thou shalt not read
> Save what I tell you, never books that tell
> Of men and women as they live and are,
> Thou shalt not see the dramas that portray
> The evil passions and satiric moods
> Which mock the Christian nation and its hope.
> Thou shalt not drink, not even wine and beer.
> Thou shalt not play at cards or see the races,
> Thou shalt not be divorced, thou shalt not play.
> Thou shalt not bow to graven images
> Of beauty cut in marble, fused in bronze.
> Behold my name is Demos, King of Kings,
> My name is legion, I am many, come
> Out of the sea where many hogs were drowned.
> And now the ruler of Hogocracy
> Where in the name of freedom hungry snouts
> Root up the truffles in your great Republic,
> And crunch with heavy jaws the legs and arms
> Of people who fall over in the pen.
>
> Doomsday Book (Masters) 1920.

Laws like this never fail to make it easy for the rich and especially hard for the poor man. Just as our present Prohibition Law permits the rich man to have all the wine and whiskey he wants in his cellar, but punishes the poor man if he is found with a single bottle in his lodgings; so, when the Sabbath keeping crusade had been at its height, the judges (who were accustomed in those days to ride in their carriages) said that it was a work of necessity for a servant to drive his master in a carriage. But there was no necessity for a poor man who could afford but a nickel for transportation, on that day to ride at all, and therefore until special statutes were passed permitting it, it was a crime to run a street car on Sunday. One Chief Justice of Pennsylvania let the cat out of the bag when he declared: "What

is a mere luxury or entirely useless and burdensome to a savage may be a necessity to a civilized man. What may be a mere luxury or pleasure to a poor man, may be a necessity when he has grown rich." Com. v. Nesbet, 34 Pa. St., 398.

An Indiana farmer, who was a good many miles from his market and who had, one Sunday in August, several hundred watermelons ripening so fast that before the next market day most of them would be spoiled, started to town with a load. A jealous neighbor had him arrested, but all the judges of the Supreme Court declared that he was engaged in a work of necessity. "It was his duty as a prudent and careful husbandman to labor diligently in getting as many of his melons to market as he could, so that the fruits of his toil might not be wasted or suffer to decay." Wilkinson v. State, 59 Ind. 416.

The editor has known more than one Judge who considered a morning cocktail a necessity, but no Court has had the bravery to declare this judicially, though more than one has, when it came to a man's daily cigar. See State v. Carver, 69 Ind. 61.

It seems all to depend on the length of the Chancellor's foot and the personal habits of the Court in which the unfortunate and wicked defendant finds himself. For yes and no have been the answers respectively to these questions by judges in different parts of the land. Is it a crime to play baseball on Sunday? To play golf? To shave a man? To mend someone's trousers? (Trial of *Joseph Neet,* p. 583.)

Of the Puritan Sunday something has been said in a former volume.[12]

Mr. Henry B. Hagerman (p. 599), being himself a

[12] Preface to Vol. XIII, Am. St. Tr.

lawyer, should have known better than to make a vicious, public assault on an editor of a New York newspaper. Instead of beating Coleman into insensibility with the butt-end of a heavy whip, he should have brought an action for libel against the editor. The affair proved costly for the lawyer, who was found guilty of assault and had to pay costs and damages amounting to over four thousand dollars. Mayor Colden who presided at the criminal trial for assault, severely condemned the prisoner and pointed out forcibly that:

"In this community the law is open for the redress of every injury; and if instead of having recourse to legal measures, men, in pursuance of your example, should undertake to avenge their own wrongs, the dominion of the laws would be subverted and disorder and confusion prevail."

These are wise words and might well be taken to heart by citizens of American communities today, who at times disregard legal processes and take the law into their own hands.

There is a strong melodramatic tinge to the story of the trial of *Albert W. Hicks* (p. 625) for Piracy, coupled with three murders on the high seas. The crime was a sensational one and the pirate and murderer, after being convicted and sentenced to death, made a most remarkable confession, which, if true, stamped him as a confirmed desperado and "deep-dyed villain." In 1860 New York City was much stirred up by the case and a contemporary pamphlet gives full details and even pictures of the crime. The day of his execution on Bedloe's Island was the occasion of a grand excursion in New York harbor to witness the hanging. It was a veritable "Roman holiday" for a certain class of New Yorkers and their female friends.

The official steamboat chartered by the Federal authorities to convey to the island the criminal and the officers of the law, was laden with city politicians and their followers, while a vast fleet of excursion boats loaded to the water's edge, enlivened the proceedings. The scene must have been a curious one and it illustrates the crudity of American civilization in the middle of the last century. It could hardly be repeated today.

The belligerent Quakers in Massachusetts (Trial of *Benjamin Shaw and others,* (p. 657), were charged both with Riot and Disturbing Religious Worship and were equally guilty of both. A Riot is the disturbance of the peace by three or more persons, to carry out some intent to the terror of the people. It is the culmination of two other offenses called Unlawful Assembly and Rout. And it takes three to effect it; if two men fight on the street, it is not a Riot, but an Affray. An Unlawful Assembly is a meeting of three or more people for the purpose of committing an illegal act. A Rout is the proceeding to do this. A Riot is doing it. A, B and C meet at A's house for the purpose of beating D, who lives a mile away. They go together to his house and beat D. At A's house it is an Unlawful Assembly; on the road it is a Rout; at D's house it is a Riot.

We have already witnessed a trial for *Disturbing Religious Worship,* that of the unwise *Degey* (2 Am. St. Tr. 171), who undertook to contradict the minister in the pulpit. One Ramsay in a church in North Carolina, acted just as Mr. Shaw did and had to suffer the same penalty. He got up in his pew and began to relate his grievances. The parson tried to stop him, but it was no good and he had to be forcibly ejected before the service could proceed. Even if a member is given permission to speak he must do so in a proper

manner. Mr. Lancaster of Alabama, having obtained leave of the minister to speak, delivered this startling address: "I neither rise to preach, pray or sing; but I want to talk to the church. I have meditated, thought and prayed to know what I ought to do. I demand my letter. I cannot live in the church with liars, thieves, rogues and murderers." The Supreme Court of the State to which he appealed held that he was properly convicted.

The cases of this kind in the reports of the Appellate Courts are very amusing, as where a profane person swore in the ear of a Methodist hearer, though no one else in the congregation heard him; where a lot of big boys laughed, cracked nuts and cursed in church and some others swore, fought and threw stones in the yard outside while the congregation was dispersing, and where a member disturbed, after service, an assembly of church authorities that were engaged in the trial of a fellow member. A profane law writer has taken issue with this last case, saying that it is not easy to see how such an assembly can be construed as one for the worship of God, as it is generally an assembly for the purpose of raising the Devil and as difficult to disturb as an average political caucus.

But disturbing the sleep of religious people after they come from service is not within the law, and a bad singer may disturb the congregation with impunity. This was the case of Mr. Linkaw of North Carolina, who when he joined in the hymns, "made one part laugh and the other mad. The irreligious and frivolous enjoyed it as fun, while the serious and devout were indignant." Once the preacher shut up his book and declined to go further and once the presiding Elder refused to preach there on account of it. Linkaw was a

strict Methodist, and when expostulated with replied that he "would worship his God and as a part of his worship it was his duty to sing." A witness on the trial sang a verse in his style and manner which "produced a burst of long and irresistible laughter, convulsing alike the spectators, the bar, the jury and the Court." Notwithstanding the jury found him guilty, the decision was set aside by the Supreme Court because he had no bad intent in the way he sang.[13]

Could the preacher himself, who in the pulpit is lord of all he surveys, with no one before him who can answer him without committing a crime, as we have seen in Degey's case—could the preacher ever be guilty himself? The editor has answered in another book. Yes, very probably, should he unnecessarily dwell on the sins of his hearers in such a personal way as to cause them to call him to order or to take to the doors.[14]

There were many strange and desperate efforts made to injure the North by Confederates in the closing years of the Civil War. The trial of *John Y. Beall* (p. 683) for violation of the rules of war and acting as a spy is an interesting illustration of southern fanaticism. At the time of Beall's activities on Lake Erie the cause of the Confederacy was clearly lost, and such foolish and futile efforts as those of Beall, Burley, Martin and others along the Canadian-United States border were not only crimes but the utmost folly. Beall's trial and execution in 1865 produced much interest in both the United States and Canada, and were extensively commented upon. Also, in 1915, an eminent Canadian jurist, Mr. Justice Riddell of Toronto,

[13] See State v. Ramsay, 78 N. C. 450. Lancaster v. State, 53 Ala. 389. Hunt v. State, 3 Tex. App. 116. State v. Edwards, 32 Mo. 550. Hollingsworth v. State, 5 Sneed, 518. State v. Linkaw, 69 N. C. 214.

[14] Criminal Cases Simplified, 114.

revived interest in the case by an article entitled "A Court Martial Fifty Years Ago." There is little question but that Beall received a fair and just trial and that the sentence of death was deserved under the rules of war. It was a tragic fate for the young Southerner, he being but thirty years of age, to suffer, but he took the risk, foolish as it was, and had to suffer the penalty. The trial is an interesting example of procedure before a Military Commission or Court Martial.

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THE TRIAL OF CHARLES J. GUITEAU FOR THE MURDER OF PRESIDENT GARFIELD, WASHINGTON, D. C., 1881.

THE NARRATIVE.

In the summer of 1881 President Garfield[a] arranged to make a trip through the Eastern states, a principal feature of the journey being a visit to his *alma mater*, Williams College.

a JAMES ABRAM GARFIELD was born in a log cabin twelve miles from Cleveland, O., on Nov. 19, 1831. When he was two years old his father died leaving the family in straightened circumstances. By the time the son reached the age of seventeen he had worked as a farm-hand, carpenter's helper and boatman. He devoted all of his spare time to study with the result that he was admitted to Williams' College in 1854, where he paid his tuition from his savings. Two years later he was graduated with the highest honors. He was then made professor of Latin at the Hiram Institute and at the age of twenty-six he was appointed president of this college. In 1859 he was elected State senator of Ohio. The civil war breaking out he was appointed Lieutenant-Colonel of the 42nd Ohio regiment on Sept. 25, 1861, and on December 17th was placed in command of the 17th Brigade. In January he was promoted to the rank of Brigadier-General, and in October, 1862, was made Major-General of Volunteers for gallant conduct at the battle of Chickamauga. In 1862, while he was still in the army, he was elected to Congress, and in December, 1863, he reluctantly resigned his commission to accept his seat. He was a member of the Electoral Commission of 1877. While still serving as Congressman he was elected to the United States Senate in January, 1880. At the Republican National Convention held in Chicago in June, 1880, he was nominated for president. Elected in November, 1880, and inaugarated 20th president of the United States on March 4th, 1881. He had served less than four months when he was shot down by the assassin's bullet.

Mrs. Garfield, who was recovering from a severe illness and who had been for some weeks at Long Branch, was to join him at New York. On the morning of July 2nd, the President, accompanied by Secretary of State, Blaine, drove to the station, another carriage containing several members of his cabinet, his secretaries and his children, preceding him. The President and Mr. Blaine walked leisurely through the waiting-room arm in arm and had gone but a short distance when two shots were fired in quick succession. At the second shot the President turned quickly and fell heavily to the floor, the blood flowing rapidly from a wound in his side. Secretary Blaine turned toward the assassin, but discovering that he had been seized, gave his attention to his prostrate chief. Medical aid was at once summoned and he was taken to the White House where he remained until the 6th of September when, as a last hope, he was removed to Elberon on the New Jersey coast, where he died September 19, deeply mourned by the nation and the civilized world.

The assassin attempted to escape by the door of the waiting-room, but being seized and seeing that resistance was impossible, he declared that he had fired the shots, exclaiming: "I am a stalwart and Arthur is president." He handed a letter to his captors addressed to General Sherman, in which he requested that troops be sent to the jail to protect him, and later issued what he called an address to the American people in which he said: "I killed the President for the purpose of reuniting the Republican party. His death was a political necessity." His name was Charles Julius Guiteau. Living by his wits he had in turn been an exhorter, the publisher of a religious newspaper, an insurance agent, a disreputable lawyer who kept most of the money he collected for his few clients, a member of the Onieda community, a blackmailer and always a ne'er-do-well. He was thirty-nine years old and had about reached the end of his tether. The members of his family were a curious lot—his father being a half-crazy fanatic. His paternal grandfather claimed intimate relations with the Deity, believing he could cure disease by the

laying on of hands. Other members of his family were insane and epileptic.[b]

In the Republican National Convention which met in 1880 to nominate its candidate for the Presidency, there were two factions—one determined that General Grant should have a third term and the other bitterly opposed to him and to the violation of General Washington's precedent. The latter won, and after a fierce struggle, Garfield was nominated. The Democratic candidate was General Hancock,[c] a hero of the civil war, and campaign orators of every kind were pressed into the service of both parties. Among others on the Republican side appeared Guiteau, who seems to have been allowed by the managers to make a few speeches and who considered himself entitled, when the victory was won, to a substantial reward.[d] After the inauguration of President Garfield he went to Washington, obtained interviews with both him and Secretary Blaine, and though his absurd claims to a consulship or diplomatic position were treated as they could only be treated, he remained in the city for months writing letters to the State department and hanging around the Executive mansion and the public offices until he became a practical nuisance. In the end he seems to have conceived

b Hamilton, post p. 84.

c See post p. 7.

d "Much has been said of the ridiculous claims of Guiteau as to the value of his services as a worker for the Republican cause. It seems to have been the opinion of the late Dr. Folsom of Boston, who believed him at least partly insane, that he only addressed one meeting, and that an assembly of negroes. President Arthur said that Guiteau addressed several meetings and delivered a few speeches, and though rendering services that did not entitle him to any great reward or preferment, had evidently done his part. Mr. Blaine told me scarcely a year before he died that he reproached himself with the thought that some of his party had led Guiteau to expect rewards which were impossible, and he himself had temporized to get rid of him. Anyhow the miserable wretch who had lived by his wits for years and subsisted chiefly on the remnants of free-lunch counters, took the flattering notion to himself that he was to receive an important foreign consulship and that Mr. Hooper (then occupying the post at Paris) was to be deposed that he, Guiteau, might be sent to the French capital. After the election

an intense hatred of the President and to have determined on the commission of the crime. He bought a cheap revolver, practised at a mark for several hours, but being an arrant coward, he desisted on several occasions when he saw the President in public, because "there were others around him." Finally when he went to the railroad station he hired a hack to take him to the jail so that he might escape the vengeance of the crowd.

His trial took place in Washington and lasted seventy-two days. The court-room was crowded every day[e] and the

he haunted the State Department and wrote voluminous and frequent letters of a boastful and conceited kind to the President and Mr. Blaine and others calling attention to his claim, but only met with snubs or repulses. Despondent and vengeful the idea of murder suddenly entered the mind and heart of this miserable wretch. Possibly there were other reasons for his resolution. While the inhuman suggestion that anyone deliberately instigated the murder is not to be entertained for a moment, there is no doubt that ignorant and idle tongues were at work, as they always are at such times, and it is more than possible that Guiteau received some hint and took it to heart.

When in Washington shortly after the trial I learned of this incident and have no reason to doubt its truth, for I was told by a person who was present and saw the actions of the desperate assassin. Two men prominent in official affairs during the Garfield administration were conversing in a secluded corner of the Riggs House, which this disappointed politician fairly haunted. They did not talk so low but that a third person, who was sitting just behind them, could hear every word uttered. That man was Guiteau. In this conversation these two men related the commonly known fact of the enmity existing between Roscoe Conkling and President Garfield, and stated that whoever settled the difference that existed would probably be rewarded beyond his wildest expectations. Guiteau grew more and more interested, taking the hint literally. The paper he was reading slowly slipped from his hands as he listened vaguely to the words which fell from their lips and he at that time received his "inspiration". In a South or Central American country his solution of the difficulty would have brought its reward, but he had not to cut the Gordian knot in any such semi-civilized place. His insanity, if any, consisted in the idea that he should murder the head of a great nation who was, after all, loved by the people, no matter how much he was hated by certain politicians." Recollections of an Alienist (Hamilton), post p. 7.

[e] "Never before or since has there been such a trial in this coun-

prisoner constantly interrupted the proceedings and insisted on making speeches to the jury which the judge did not prevent as he might have done by removing him from the court-room, because he was of the opinion that Guiteau's conduct there would give the jury the best opportunity it could have for judging whether his defense had any foundation to support it.

For his defense was insanity, that he had been "inspired" by the Almighty, and directed by him to "remove" President Garfield for the good of the Republic. But when the evidence was all heard and the lawyers for the Government and the prisoner had made their long speeches, and the judge had delivered his learned charge, it took but a few minutes for the jury to decide that he was as sane as most murderers are who take human life to gratify personal or social or political revenge, with a full knowledge of the unlawfulness of the act.

He was hanged in the United States jail at Washington on June 30, 1882.

try, and the disorder at times must have resembled that of any revolutionary gatherings in Paris of 1793. The audience consisted of noisy patriots, negroes, fashionable women, actresses playing at the time in Washington, the demi-mondaine, politicians, soldiers, and the riff-raff of Washington. I spent three weeks in the foul court-room breathing the worst of bad air emanating from the diseased lungs of scores of dirty negroes and the unwashed bodies of filthy loungers whose damp clothes fairly reeked with all sorts of stinks. The windows were usually closed and the place was heated to an insufferable degree. Many good men contracted diseases and the trial had to be halted because of the illness of a juryman, and again by the illness of the wife of another. Not a few died subsequently. Though Guiteau cursed us all it was not his anathemas that did the work, but the mephic air. In this connection, however, superstitious persons have commented upon the untimely deaths of a number of participants, including Judge Cox, the lawyers of the prosecution—District Attorney Corkhill, Judge Porter and Mr. Davidge—several of the jurors and some of the prominent experts. My dear friend, Dr. A. E. McDonald, died of tuberculosis, evidently contracted at this time."—Hamilton.

THE TRIAL.[1]

In the Supreme Court of the District of Columbia, Washington, D. C., November, 1881.

Hon. WALTER S. COX,[2] *Judge.*

November 14.

On October 14 the Grand Jury returned an indictment against Charles J. Guiteau charging him with the murder

[1] *Bibliography.* "Report of the Proceedings in the case of The United States vs. Charles J. Guiteau, tried in the District of Columbia, holding a Criminal Term and beginning November 14, 1881. In three parts. H. H. Alexander and Edward D. Easton, Official Stenographers, Washington; Government Printing Office, 1882." This is in three volumes of 1820 pages. It contains all the proceedings on the trial stenographically reported in full, also the proceedings on appeal and the opinion of Mr. Justice Bradley of the Supreme Court of the United States denying the writ of Habeas Corpus and the opinion of the Attorney-General on the petition for a reprieve.

"A Complete History of the Life and Trial of Charles Julius Guiteau, assassin of President Garfield, by H. G. and C. J. Hayes, Special Stenographic reporters for the N. Y. Associated Press. Amply illustrated. Hubbard Bros., Publishers, Philadelphia-St. Louis."

"The Truth and the Removal. By Charles Guiteau. Published and sold only by the Author. Washington, D. C., 1882." The preface is by Mr. Scoville, his counsel, who says: "This volume was published under the supervision of Guiteau during the trial. Of the edition, one thousand, but few were sold during his life, the greater part coming into my hands upon payment of a balance due the printers." Mr. Scoville pleads that the book is evidence of the author's insanity. "'The Truth,' says Guiteau in his introduction, 'is my contribution to the civilization of the race and I ask for it a careful attention to the end that many souls may find the Saviour. A new line of thought runs through it and if it does not demonstrate the existence of Heaven and Hell, I submit their existence cannot be proved.'"

"Memorial Edition. The Life and Work of James A. Garfield, Twentieth President of the United States. By John Clark Ridpath, LL.D. Copiously Illustrated. Jones Brothers and Co., Cincinnati-Kansas City, 1882." The last part of the book gives a minute account of the last days of the President and of the Trial of the Assassin.

"Points of Law for Lawyers and General Readers, suggested by Guiteau's Case. Edited by Charles E. Grinnell, Editor of the

of James A. Garfield, President of the United States, at the City of Washington. It alleged that deceased was shot by the prisoner on the 2nd day of July, 1881, and died on the 19th day of September in the same year. The indictment had eleven counts. Some of them did not state the place of the shooting and death; others alleged that he was shot and died in the County of Monmouth, in the State of New Jersey.

On October 14th the prisoner was arraigned and pleaded *not guilty.*

George B. Corkhill,[3] District Attorney, *Walter D. Davidge*[4] and *John K. Porter*[5] for the United States.

American Law Review. Boston, Little, Brown and Co., 1881." This pamphlet of 96 pages contains a series of essays by leading law writers of the country as follows: Challenge to the Array (Seymour D. Thompson, Judge of the St. Louis Court of Appeals). Insanity as a Defense (Edward B. Hill, Assitant U. S. Attorney New York). Jurisdiction in Guiteau's Case (J. H. Robinson, assistant Solicitor of the Treasury, Washington). Another View of the Jurisdiction in Guiteau's Case (Robert D. Smith, Boston). Opinions of Jurors, Disqualification for Opinion or Bias. (Edward G. Merriam, St. Louis, Author of Thompson and Merriam on Juries). Confessions of Prisoners (Charles R. Darling, Boston). Morals and Laws for Crime. (The Editor.)

"Recollections of an Alienist, Personal and Professional. By Allan McLane Hamilton, M. D., LL. D., F. R. S. (Edin.) New York, George H. Doran Co." Dr. Hamilton was one of the experts who testified on the trial. See Post, p. 84.

Federal Reporter, Vol. 10, St. Paul, West Pub. Co., 1882.

"The Great State Trial. Guiteau, the Assassin. Full Details of His Trial for the Murder of President James A. Garfield. The Crime, Its Causes and Consequences. By George B. Herbert, Journalist and Author of the Life of General Winfield Scott Hancock, etc. Profusely Illustrated. Published by Forshee and McMakin, Cincinnati, Ohio.

[2] See 8 Am. St. Tr. 42.

[3] CORKHILL, GEORGE BAKER (1838-1886). Born Harrison Co., Ohio, When young removed to Mt. Pleasant, Ia. Graduated Iowa, Wes. Un. 1859. Entered Harvard Law School 1860, but the next year entered the U. S. army as Captain in Army of Potomac. Major and Paymaster in 1864-65. At end of the war returned to Iowa and was appointed clerk of the U. S. Court. Afterwards State's Attorney judicial district of Keokuk and Burlington. Practised law in St. Louis, Mo., and married daughter of Justice Miller of Supreme Court. Editor Washington Daily Chronicle, 1872. Quit

George Scoville[6], *Leigh Robinson*[7] and *Charles H. Reed*[8] for the prisoner.[9]

journalism to practise law and in 1880 was appointed District Attorney serving until 1884. Edited Law Reporter. Close friend of Gen. Sherman. Died, Mt. Pleasant, Ia. See Reminiscences, Ben Perley Poore, vol. 1, 1886. Washington Evening Star, July 7, 1886. Washington Directory to 1886. Harvard Law School, Charles Warner, vol 3, 1908. History of Henry Co., Ia., 1879. Harvard Law Quinquennial, 1817-1904.

[4] DAVIDGE, WALTER DORSEY (1823-1901). Born, Baltimore, Md., Educated in Baltimore City College, and by private tutors. In 1843 removed to Washington. Studied law in office of Hugh S. Legaré and Clement Cox, Washington, D. C. Admitted to bar of Circuit Court, 1844, and of Supreme Court, 1850. His first law partner was Thomas S. Semmes (afterwards Attorney-General). Later formed partnership with Christopher Ingle; then with his eldest son, Walter D. Davidge, Jr., the firm name being Davidge & Davidge until his death. Married Anna Louisa, daughter of Dr. Barclay Washington of the U. S. Navy and a lineal descendant of John Washington, the great-grandfather of George Washington. Founded the Bar Association of D. C. (1866), becoming its first President. Died in Washington, D. C. See Nat. Cyc. of Am. Biog., 1906. Washington Evening Star and Post of Oct. 8, 1901.

[5] PORTER, JOHN KILHAM (1819-1892). Born, Saratoga Co., N. Y. Educated in Lansingburgh Acad. and at Union Coll., graduating there in 1837. Studied law under Nicholas B. Doe and Richard B. Kimball, shortly afterwards becoming a member of that firm. Admitted to practice 1840. Member Constitutional Convention, 1846. Judge of N. Y. Court of Appeals. In 1867 LL. D. Union Coll. Member Phi Beta Kappa. See "Our County," a Record of Saratoga Co. (G. B. Anderson), 1890, vol. 7 Am. St. Tr., 895. Resigned and removed to New York to engage in practice (Porter, Lowrey, Loren & Stone).

[6] SCOVILLE, GEORGE W. (1824-1888). Born, Pompey, N. Y. When twelve years old removed to Ohio. Entered Yale Un. 1846. Studied law, 1848 was admitted to Albany Bar, N. Y. Traveled for three years in the West. Began in Chicago practice of law, 1851. Was brother-in-law of the assassin. Died in Chicago. See Bench and Bar of Chicago, 1883. Yale Coll. Cat., 1846-1847. Ridpath, J. C., Life and Work of Garfield (1882). Chicago Directory, 1888. Scoville, George, lawyer, 1889; Scoville, Ellen, widow of George. Harper's Weekly, 1881 (V. 25-801), with photo.

"Scoville was of the type of the abusive provincial lawyer but was much in earnest and, despite his constant violation of the ethics of the profession and exhibitions of bad taste, fought valiantly for his unfortunate relative who gave him a great deal of trouble. Like all men more or less ignorant of psychiatry, he confidently asked

Mr. Corkhill said that the Government was ready to proceed to trial.

Mr. Robinson said that he was here because he had been assigned by the court to defend the prisoner. At that time the eminent counsel now assisting the District Attorney had not been retained by the Government. He therefore asked for time in which to obtain counsel to assist him.

Mr. Scoville had stated that he was not familiar with the practice of criminal law. The relationship of that gentleman to the accused also disqualified him, in the estimate of many, from rendering that assistance which he required as an associate. There were three

questions of opposing experts that got him into trouble." Recollections of an Alienist (Hamilton), p. 357, ante p. 7.

[7] ROBINSON, LEIGH. Born, Richmond, Va., 1840, and was educated there. Joined the Confederate Army and served until the end of the war. Removed to Washington, D. C., and was admitted to the bar in 1871.

[8] REED, CHARLES HARVEY (1834-1892). Born, Wyoming Co., N. Y.; educated at Springfield, N. Y., and New Haven, Conn. Studied law at Lancaster, N. Y., and Kewanee, Ill. Admitted to bar (Kewanee) 1859; removed to Chicago 1860; Assistant State's Attorney Cook Co. 1862, State's Attorney 1864-1876. At the close of the Guiteau trial he removed to New York City, but misfortune followed him and he removed in 1887 to Baltimore, Md., where he died. He was three times married.

"The news of the death of Charles H. Reed, at Baltimore, formerly one of the best known members of the Chicago Bar, will be received with general surprise in this city. He had disappeared so completely from the public view and so many reports had come in the last two or three years of his mishaps and vicissitudes that it was generally expected he was dead some time ago. During his Chicago career few men were better known than he. Physically prepossessing, able and adroit as a lawyer, successful as a public prosecutor, hearty in his companionship and rarely gifted as a classical scholar, he had one of the qualities which should have made him one of the most useful and widely respected citizens of Chicago. He had not, however, the ability to withstand prosperity and the moral element of his nature was so weakened that his mental gifts were of little consequence. He left the city under a cloud of financial dishonesty and violated trusts, and from that time misfortune followed him. Continual failure only induced worse habits of dissipation, involving ill-health and poverty until, at last, he became a complete wreck. Few men in Chicago had brighter opportunities than Mr. Reed, and few men have so deliberately and recklessly thrown them away." Chicago Tribune, April 26, 1892.

[9] Later Mr. Robinson withdrew from the case and Mr. Reed succeeded him. See Post, pp. 36, 105.

material witnesses for the defense who could not be here before December. He would file an affidavit of this.

Guiteau. Your Honor, I am charged here with a murderous offense and I desire to be heard in my own defense.

THE COURT. This is not a proper time. You have Counsel.

Guiteau. I do not wish further time. We are ready to try this case now.

Mr. Corkhill insisted on the trial going on now.

Mr. Scoville. This is an unprecedented proceeding. I have undertaken in good faith to prepare for this defense. I have my witnesses subpoenaed and have done my best to be ready. I understand that I am not competent for a criminal trial of this kind. I supposed that with the assistance of Mr. Robinson we could safely go to trial. I shall withdraw from the case if the defense is to proceed in this manner. I do not want to have this case continued, nor does the prisoner. I do not know the gentlemen who Mr. Robinson says have been consulted. I have had no communication with Mr. Robinson for the last four days, although I have sought him.

Guiteau. I indorse every word of that and I tell Mr. Robinson that if he does not do this thing just as I want it done he can get out of the case. That is short.

Mr. Robinson. I must——

Guiteau. I do not want to hear any more speeches of Mr. Robinson's. I want him to get out of the case.

Mr. Robinson. I must express my unaffected regret that it should be supposed by Mr. Scoville that I intended any disrespect to him. I told him some time ago that I wanted assistance and he knew I wanted an extension of time. I am very sorry not to have seen Mr. Scoville for two or three days; it was only because I have been employed in preparing for the defense. I did not intend him the least disrespect. I will give the name of the counsel as soon as I know he can be assigned.

THE COURT. It is important that this trial should proceed without delay; that the prisoner shall have a fair trial and that the reproof shall not rest upon the Court that he was sent to the gallows to appease public indignation. I shall assign the counsel of whom he has spoken to assist him, leaving that counsel to make his arrangements to come into the case (if he cannot do so sooner) in two weeks' time. I do not think that I should give any more indulgence than this and I find embarrassment in giving that much.

Guiteau. I want to say emphatically that Mr. Robinson came into the case without my consent. I know nothing about him and I do not like the way he talks. I ask him peremptorily to retire. I expect in some time to have money to employ any counsel that I please. I am not a beggar nor a pauper.

Mr. Scoville. The only near relatives of the prisoner here, his brother and sister, will endorse all I say. In our opinion the prisoner is not a fit person to take charge of or to arrange or to dictate his defense. At least the name of the person proposed should be communicated to some of us.

Mr. Scoville. I came here acquainted with but one member of the bar whom I asked if he would accept an assignment. He said he could not. I applied to General Butler whose reply was the same. General Butler is the choice of the prisoner's relatives and of the prisoner. We do not want the Court to assign counsel.

THE COURT. If it is the desire of the prisoner and his relatives for the case to proceed I shall allow it to go on.

November 15-16.

The selecting of jurymen occupied two days. The following were finally accepted and sworn: John P. Hamlin (50), b. Ireland, Restaurant Keeper; Fred W. Brandenburg (50), b. Prussia, Cigarmaker; Henry J. Bright (52), b. Washington, Retired Merchant; Charles J. Stewart (45), b. Washington, Flour Merchant; Thomas J. Langley (54), b. Maryland, Grocer; Michael Sheehan (35), b. Ireland, Grocer; Samuel F. Hobbs (63), b. Maryland, Plasterer; George W. Gates (35), b. Washington, Machinist; Ralph Wormley (40), Plasterer (colored); William H. Brawner (45), Commission Merchant; Thomas Heineline (38), b. New York, Machinist; Joseph Prather (54), b. Washington, Commission Merchant.[10]

Mr. Scoville. An address by the prisoner has got into the papers. I wish to say that it is without my consent. Nothing will appear with my approval except what takes place here.

Guiteau. Your Honor, I appear here in a dual capacity, as prisoner and as my own counsel and I claim the final say. That paper was addressed to the legal profession and I expect many responses to it.[11]

[10] A large number of the jurors summoned were rejected because they declared that their opinion was so strong on the guilt of the prisoner that no evidence could change it. Several said they thought he ought to be hung, one "nothing but the rope should be used"; another, "he ought to be hung or burnt"; another, "no amount of torture is too great for him;" and another, "the plea of insanity is all bosh."

[11] It was as follows: "To the Legal Profession of America: I am on trial for my life. I formerly practised law in New York and Chicago, and propose to take an active part in my defense, as I know more about my inspiration and views than any one. My brother-in-law, George Scoville, Esq., is my only counsel, and I hereby appeal to the legal profession of America for aid. I expect to have money shortly so I can pay them. I shall get it partly from the settlement of an old matter in New York and partly from the sale of my book and partly from public contribution to my defense. My defense was published in the *New York Herald* on October 6, and in my speech published November 15th (yesterday). Any well-known lawyer of criminal capacity desiring to assist in my defense will please telegraph without delay to George Scoville, Washington, D. C. If for any reason an application be refused, the name will be withheld from the public." CHARLES J. GUITEAU.

November 17.

Mr. Scoville. I wish to say that after conference between Mr. Robinson we are now in perfect accord in regard to the steps to to be taken in the defense.

Guiteau. I object to Mr. Robinson appearing in this case. I would not trust him with a ten-dollar-note case.

THE COURT. Take your seat, prisoner. I wish you to understand distinctly that your labors as counsel in this case, as you claim to be, shall be confined to consultation with the associate counsel in this case. If you disobey, the Court will be under the necessity of ordering your removal from the court room and proceeding with the trial in your absence.

Guiteau. Your Honor has no right to cut me off, and I am going to make a noise to the country about it. One or two blunderbuss lawyers will compromise my entire defense, and I will not have it. I come here in the honorable capacity of being the agent of the Deity on this occasion, and I propose to appear as such. I do not come on my hands and knees, and that is all there is about it. That is the view I supposed your Honor to have taken.

THE DISTRICT ATTORNEY'S OPENING.

Mr. Corkhill. Gentlemen: There rests in any case a grave and responsible obligation upon every man who is called upon in the discharge of his duty under the law, to render a decision upon which depends the life of a fellow creature. And while it is true that the offence charged in the present case is no greater in legal gravity and consequences to the prisoner, than if by his act he had taken the life of the humblest and most obscure citizen of the Republic, still it is idle to overlook the fact that the eminent character of the man whose life was taken, his high official position, and the startling effects of the commission of the crime, render the case one of unusual and unparalleled importance. It is the second time in our history that the citizen chosen by the people of the United States to discharge the high and responsible duties of President, has fallen a victim to a lawless assassin during the period of his incumbency of the office.

But in the former case we were just emerging from the shadows of a long and bloody war. The country had been racked by commotions and stirred by civil feuds. Throughout the length and breadth of the land, nearly every household mourned the loss of relatives or friends, slain on the hotly contested battlefields of the Republic. It was a danger that thoughtful men had anticipated. It was a calamity that patriots had feared. And when it came, with all its dread consequences, it was accepted as one of the results of the then disordered and discordant conditions of public affairs.

But we had passed from the arena of the war; the sword had been beaten into a ploughshare and the spear into a pruning hook; the country was united—peace reigned at home and abroad. There

were no local dissensions; there were no intestine strifes; seed-time and harvest had come and gone; the battlefields, redeemed from the scars and havoc of their bloody contests, were blossoming with the fruits of peaceful labor. Suddenly the startling fact was proclaimed throughout the land and around the entire world, that the President of the United States had fallen a victim to the assassin's bullet in the Capital of the nation.

Murder, under all circumstances and upon all occasions, is shocking. The life of which we know so little and which we hold by so fragile a tenure is dear to us all; and when it is brought to a close, not in the usual order and course of nature, but prematurely by violence, no matter what may be the condition of the person, the human mind is appalled with terror. When a man, holding a position of eminence and power, falls a causeless victim to the murderer's stroke, we realize still more fully the awfulness of the deed which produces the result.

This trial is a remarkable illustration of the genius and spirit of our Government. Although our chief ruler was murdered; although the effect of that death was felt in every station of life, in every avenue of business, in every department of society, yet the prisoner, his murderer, stands before you to-day entitled to the rights, to the same privileges, panoplied by the same guarantees of the Constitution, as if he had killed the lowliest member of this community. I doubt whether, in the world's history, there can be found another instance like the present. In no age, under no government, has there been seen such a situation as we have here before us. Defended by eminent counsel, demanding of right the full benefit of every provision of law and the protection of every guarantee of the Constitution, with the power, exercised carefully, to see that the jury selected is unbiased and free from prejudice; every right is extended to the prisoner that would be granted to a criminal charged with the most insignificant offence.

It has been a subject of the deepest anxiety and gravest consideration on the part of the admirers of our form of government, whether the fundamental principles which underlie it did not contain elements fatal to its permanency and success. With the individual citizens are its absolute destinies for weal or woe. The choice of your proper rulers, the enactment of laws and their prompt execution, depend upon his character. No matter how important the trust or how grave the responsibility, upon the individual citizen rests its final decision.

The simplicity of the forms under which our Government is administered, constitute for us one of its greatest attractions, but the easy accessibility to all of those charged with its administration exposes them to many dangers from the viciously disposed. The President of the United States, without pomp and parade, but after the manner of the humblest citizen and with no other safeguard than those common to all citizens leaves the scene of his official labors for a brief recreation. In a public depot the prisoner at the bar, without warning, fires at him with a pistol, inflicting wounds

which result in his death. And to-day, this, the greatest case ever presented to a court of justice, is trusted entirely to you, who have been selected from the body of the community, to weigh the evidence and the law, and then to say upon your oaths whether the man charged with the crime is guilty. While this trial will attract unusual attention throughout the entire world, yet its final decision rests with you. You are to determine, after you shall have heard the evidence and been instructed in the law, whether or not the prisoner at the bar is guilty of the murder of James A. Garfield.

The time and the scene of that occasion were generally disseminated by the press and are still fresh in the minds of every citizen of the Republic, and they will remain with all their sad and gloomy results until the present generation shall pass from among men. After we are dead they will live in tradition, in history, song and story till the latest hour of time. There is an enormity about the immediate occurrences as they will be detailed to you by the witnesses for the Government that makes them horrible to contemplate.

No words can faithfully depict the scenes of that fatal July morning. It was bright and beautiful and the morning sunlight gilded the dome of the Capitol, the rays fell upon a city adorned with all the loveliness of summer leaf and flowers. The President, wearied with official cares, was specially joyous at his approaching vacation. He started from the Executive Mansion, in company with the Secretary of State, buoyant and glad. Early on the morning of July 2d, last, the prisoner at the bar made preparation for the murder. Breakfasting at the Riggs House, he took the fearful weapon that he had previously obtained and going to the foot of Seventeenth Street, away from residences and beyond observation, he planted a stick in the soft mud on the river bank where the tide had gone out and deliberately practised his aim and tested his weapon. He intended there should be no failure in the accomplishment of the crime for which he had been preparing. Returning he took with him a small bundle of papers and went to the Baltimore and Potomac Railroad Depot at half past eight, an hour before the arrival of the President.

After reaching the depot he went to the news stand and left certain papers with a letter addressed to Byron Andrews, a correspondent of the Chicago Inter-Ocean, and a paper addressed to Mr. Preston of the New York Herald, and then went into the closet, carefully examined his weapon, placed it in his pocket, returned and went outside to the pavement, had his boots blackened, and then, in order to avoid the swift vengeance of an outraged community, which he properly feared, engaged a carriage to take him, as he said, to the Congressional Burying Ground, this point being near the jail, and then entered the waiting room to watch for his victim.

All unconscious of the preparation for his murder, President Garfield, in company with Secretary Blaine, arrived at the depot and for a few moments remained in the carriage in conversation. While thus occupied the assassin stood gazing at them, waiting and watch-

ing for a favorable opportunity for the perpetration of the deed. The President and the Secretary of State alighted from the carriage. With his usual courtesy President Garfield hesitated a moment on the step to acknowledge the salutation of the policeman at the door, and then entered the depot. He had gone but a few steps when the assassin lurking in the rear, stepped up behind him, and pointing his pistol with deliberate aim fired at his back, the first shot, no doubt, doing its fatal work. The President shuddered, staggered and attempted to turn, when another shot was fired and he fell bleeding to the floor—unconscious.

The horror that seized upon everybody may be imagined but no words can describe it. The ball from the assassin's pistol had entered the middle of the back of the President about three inches to the right of the back bone, inflicting a fearful wound which resulted in his death after nearly three months of pain and suffering—and here the story of the crime might legally end, for the unlawful killing of any reasonable creature by a person of sound memory and discretion, with malice aforethought, either expressed or implied, is murder.

The motives and intentions of an individual who commits a crime are of necessity known to him alone—no human power can penetrate the recesses of the heart—no eye but the eye of God can discern the motives for human action. Hence the law wisely says, that a man's motives shall be judged from his acts, so that if one kill another suddenly without any provocation, the law implies malice. If a man uses a deadly weapon it is presumed he intended to commit murder, and in general the law presumes a man to intend the natural consquences of the act.

Were there nothing more against the accused than the occurrences on the morning of July 2d, the evidence of his crime would be complete and you would be authorized to conclude that he feloniously, wilfully and with malice aforethought did kill and murder James A. Garfield. But crime is never natural. The man who attempts to violate the laws of God and society goes counter to the ordinary course of human action. He is a world to himself. He is against society, against organization, and of necessity his actions can never be measured by the rules governing men in the every day transactions of life. No criminal ever violated the laws who did not leave the traces of his crime distinct and clear when once discovered. So in this case we can only add to the enormity of this offence by showing you its origin, its conception and the plans adopted for its execution.

One year ago, the 11th of the present month, the prisoner addressed to Hon. Wm. M. Evarts, the Secretary of State, the following letter:

NEW YORK, November 11, 1880.

Hon. Wm. Evarts. Dear Sir: I wish to ask you a question. If President Garfield appoints Mr. A. to a foreign mission, does that supersede President Hayes' commission for the same appointment?

Do not all foreign ministers appointed by President Hayes retire on March 4th next?

Please answer me at the Fifth Avenue Hotel at your earliest convenience. I am solid for General Garfield and may get an important appointment from him next spring.

Yours very truly, Charles Guiteau.

At this time, over a year ago, it will be seen he had in his mind an application for and expectation of receiving an office under the approaching administration. In pursuance of that hope the prisoner came to this city on the afternoon of the 5th of last March, no doubt believing that he would receive at the hands of an administration he supposed he had assisted in placing in power, such recognition as according to his own opinion of his merits, he deserved. He was outspoken and earnest in his demands, and in his various conversations seemed to feel confident of success. From his own letters it is evident that during October and January he had written to President Garfield, calling attention to his services in the campaign and soliciting an appointment. On the 8th of March he addressed a letter to the President calling his attention to the fact of his desire to be appointed to the Paris Consulate. On the 11th of May he wrote Secretary Blaine the following letter:

March 11, 1881.

Senator Blaine: In October and January last I wrote General Garfield touching the Austrian Mission, and I think he has filed my application and is favorably inclined. Since then I have concluded to apply for the Consul Generalship at Paris, instead of the Austrian Mission, as I prefer Paris to Vienna. I spoke to the General about it and he said your endorsement would help it, as it was in your department. I think I have a just claim to your help on the strength of this speech (enclosed), which was sent to our leading editors and orators in August. It was about the first shot on the rebel war-claim idea, and it was the idea that elected General Garfield. Mr. Walker, the present Consul at Paris, was appointed through Mr. Evarts, and I presume he has no expectation of being retained. I will talk with you about this as soon as I can get a chance. There is nothing against me, I claim to be a gentleman and a Christian. Yours very respectfully,

Charles Guiteau.

He followed this communication by persistent personal appeals and by writing notes and letters urging in various ways his claim for this position. Not only did he besiege the Secretary of State and the officers of the State Department, but the President and the officers of the Executive Mansion. Generally treated with courtesy and kindly dismissed, as his wants and necessities became more urgent, he became more persistent and determined. On the 8th of March he commenced writing to the President, stating his reasons why the position should be given him, and urging in various ways

his claims for the place. Finally, his importuning became such a nuisance that Secretary Blaine ordered him to keep away from the State Department, and he was forbidden admittance to the White House.

Soured and indignant at this treatment, disappointed and enraged, on the 23d of May he wrote President Garfield a letter in which—in the light of the fearful tragedy that followed—it needs no discerning eye to detect the threat of murder. This is the first premonition of the conception of this crime. That letter was the first indication that disappointment had turned his heart to malice, and that he had determined in revenge to commit the crime with which he stands charged. He was still smarting under the indignity cast upon him by the Secretary of State: he was still suffering from the rebuffs he had received at the hands of the employees of the Executive Mansion. Of inordinate vanity and of unparalleled self-esteem, he had keenly felt the personal outrages he supposed had been committed upon him, and he determined to avenge them. That letter is a remarkable one; remarkable as indicating the motive that prompted this terrible crime; remarkable as giving an insight into the reasons that impelled this man to nerve himself up to a condition to commit this deed. It was as follows:

General Garfield: I have been trying to be your friend. I do not know whether you appreciate it or not; but I am moved to call your attention to the remarkable letter from Mr. Blaine which I have just received. According to Mr. Farwell, of Chicago, Blaine is a vindictive politician and an evil genius, and you will have no peace till you get rid of him. This letter shows Mr. Blaine is a wicked man and you ought to demand his immediate resignation, otherwise you and the Republican party will come to grief. I will see you in the morning if I can, and talk with you.

Very respectfully,

May 23. Charles Guiteau.

You see in these sentences his bitterness of spirit, inspired by the treatment he claims to have received at the hands of the Secretary of State, and the demand for his removal and the threat, if it was not done, what would result. Yet we will find on the 21st of March he wrote to Secretary Blaine:

"I am very glad personally that the President selected you for his premier. * * * * You are the man above all others for the place."

That is one chapter in the history of this crime. The letter standing above and independent of every other circumstance, would not of itself attract attention to its peculiar and significant expressions. But it will be shown, that among the papers left by this man for publication, is found one dated the 16th day of June, 1881, in which he uses this significant language: "I conceived the idea of removing the President four weeks ago." So that at the time he wrote that letter, he in effect said, I want my office, Mr. Blaine

stands in my way, I demand his removal, if it is not done, ruin for you and the party will be the result.

Guiteau. Political ruin, if you please, not personal ruin.

Mr. Porter. The administration of justice, and especially of criminal justice, should never be distracted by the clamor, the disorder or the contumacy of the prisoner. I must insist on the execution of the order of the Court.

JUDGE COX. It is within the power of the Court to order the removal of the prisoner and to have the trial conducted in his absence.

Guiteau. I will not do it again, your Honor.

Mr. Corkhill. It will be for you to consider whether this was not as near a threat of his determination to do this crime, as he dared then to make with his knowledge of the law and the danger of exposure. When he conceived the idea he had been rebuffed and, as he thought, insulted by the Secretary of State. He had been driven from the White House. He was disappointed in his grand expectations. He was without money and also an almost destitute wanderer upon the streets, and he determined to do the cruel deed. But here is the first conception; the original inspiration. Here the ground-work of his settled determination. Once the idea conceived that he was a wronged and outraged man, it took but little time for him to decide to represent his actions as being the result of his desire to vindicate some great principle. He knew, and well knew, that he must hang some screen in front of the real motive for his crime. His heart was wicked enough to conceive from its own malignity the crime itself, but his shrewdness and vanity demanded that the public should not gaze upon the real motives. This will account for all of the extraordinary circumstances connected with the crime. This will explain many of his lofty and egotistical utterances. It is true there was a period during this time when there existed dissensions in the party in power. It is a well-known fact, that as between the Executive and certain prominent and eminent men there was a difference of opinion as to the course to be pursued and the policy to be inaugurated by the administration then just at its commencement. It is true that there were grave differences of opinion and earnest expressions of sentiment on questions of great gravity and importance to the peace and welfare of the country, and as attendant upon these, there were frequent utterances of bitterness by partisans on either side. To this man's wicked and revengeful mind it immediately occurred: "Here is the opportunity to commit the crime; to avenge myself and shelter my actions under the claim that it was the outgrowth of the present strife;" and he systematically and cunningly prepared an apology and defense of his crime in accordance with this. You will learn by the testimony that will be presented to you, that from the time of his arrival in this city and until he had lost the expectation of favors to be received, and made up his mind to kill the President, a period of nearly three months, he was an earnest, so-called Garfield man. He announced to the President, as will be shown by his own letter, his devotion and

fealty to him; he desired constantly to impress upon the President that he was for him as against every one else. You will find him on May 7th announcing to the President, that in the contest going on, he stood by him; but when he had lost all hope of the appointment he desired under the administration of President Garfield, and all expectation of official recognition from this source, he resolved to seize upon the pretext afforded by the situation, to gratify his revenge and kill the President, and shield his real motives from the public. After this had been fully settled in his mind, with his experience of human affairs; with his observations of society (for he is a man of no ordinary ability in these directions), he carefully determined to make the situation of advantage to him, and when he had fully conceived the idea, when it had fastened itself on his mind, he went to work to accomplish his purpose with a spirit of vindictiveness, with a cruel determination that has scarcely a parallel in the annals of crime. How many efforts to do the deed, or when and where he decided upon the exact method of its commission, no human mind can tell.

On the 8th day of June he borrowed from an acquaintance in this city fifteen dollars, representing that he was out of money and desired the amount to pay his board bill. After procuring this loan he at once visited the store of Mr. O'Meara, on the corner of Fifteenth and F Streets, for the purpose of purchasing a weapon. In this, as in all other acts connected with the commission of this crime, he displayed the malignity of his determination and the wickedness of his motives. He asked for a pistol of the largest calibre, and one that would do the most effective work, and was shown and purchased the pistol which he finally used; a weapon terrible to behold, carrying a ball of the largest size; a weapon that was self-cocking, in order that there might be no delay in its use when an emergency occurred.

How for twenty-four days he carried that deadly weapon, and how often he dogged the footsteps of the unsuspecting President; how he watched his carriage; how he made his arrangements at the church; how he followed him from the residence of Mr. Blaine, watching and waiting for the fatal hour, he alone can tell; but on the morning of the 18th of June he ascertained from a publication in the newspapers that the President would go to Long Branch, and he determined to kill him at the depot. How he went there fully prepared for that purpose, and was deterred from its accomplishment his own words best tell. Returning to his room he wrote:

WASHINGTON, Saturday Evening, June 18.

"I intended to remove the President this morning at the depot, as he took the cars for Long Branch. Mrs. Garfield looked so thin, and clung so tenderly to the President's arm, my heart failed me to part them, and I decided to take him alone; it will be no worse for Mrs. Garfield to part with her husband this way, than by natural death; he is liable to go at any time anyway. C. G."

After this commenced the period of watching and waiting. It might be a story of thrilling interest to know how often the fatal danger threatened the lamented dead, and how often while buoyant with life the shadow of death haunted him. But again we are in the field of conjecture, until we come to the morning of the murder, the occurrence of which I have already described. And this completes the story of the crime. This ends the recital of the circumstances attendant upon this National bereavement; for it cannot be forgotten that the effects of that fatal shot were felt throughout the land; that not only one family mourned, but around every hearthstone and about every fireside there hung a shadow, and it is not surprising that many for a time forgot law, and doubted Providence, for it seemed so terrible that this man, in the full tide of his career of eminence and usefulness, should fall murdered without warning or notice.

No verdict of yours can recall him. He "sleeps the sleep that knows no waking," on the peaceful banks of the beautiful Lake Erie, whose limpid waters wash the boundaries of his native State, overlooking the city he loved so well, and beneath the sod of that State whose people had crowned his life with the highest honors. It is too late to call that husband back to the bereaved wife and fatherless children. For that waiting little mother whose face will never fade from the Nation's memory, there can be no relief in this world. The fatal deed is done and its horrors and griefs must remain.

You have each been asked whether you were governed by religious convictions, and upon your oaths you have answered affirmatively. Eighteen hundred years ago it was written by the pen of inspiration as the law of that merciful God whom you revere: "Woe unto the world because of offences, for it must needs be that offences come; but woe to that man by whom the offence cometh. It were better for him that a mill-stone were hanged about his neck and that he were drowned in the depth of the sea." And the honest, patriotic, law-abiding people of this country are waiting for your verdict, to see whether the man by whom this great offence came shall not suffer the just and merited punishment of the law.

THE WITNESSESS FOR THE PROSECUTION.

James G. Blaine.[12] Am Secretary of State. On July 2nd a little after nine a. m., the President and I left the White House in my carriage, followed by his own containing his children. We alighted at the railroad station and went together through the waiting room. I suddenly heard two reports of a pistol

[12] BLAINE, JAMES GILLESPIE (1830-1893). Born, West Brownsville, Pa. Member House of Representatives 1862-1876; Speaker 1869-1875; United States Senator (Maine) 1876-1881; Secretary of State 1881; 1889-1892; Republican candidate for President, 1884. Author of "Twenty Years of Congress." Died in Washington.

and the President threw up his hands and said: "My God, what is this?"

Then there rushed past me a man. I followed him instinctively. Then the shout came up, "We have got him." I was the first or second person who got back to the President; he was vomiting and unconscious. Immediately a very large crowd surrounded him, mattresses were brought from a sleeping-car and he was removed to an upper room in the depot. Medical aid was soon at hand and he was carried to the White House. I wrote a despatch to the public, especially to the European public, directing it to the Minister at London. The man I ran after was Guiteau. The shot being behind my back I did not see him with the pistol in his hand. I have seen the prisoner very often. He visited the State Department twenty times. I conversed with him several times. I never gave him the slightest encouragement that he would receive an appointment. I told him there was no prospect whatever and that I did not want him to continue his visits. He was a very persistent applicant for the Consul-Generalship at Paris. Had written quite a number of letters. These are letters which were received from Guiteau and believed to be in his handwriting. This is a letter that came over from the White House. That letter Mr. Evarts found on the floor of the State Department. I came with the funeral train. I saw the body after death at Elberon, N. J., where he died on 19th Sept. in the cottage belonging to C. F. Francklyn, of New York, who had very kindly tendered its use for the President.

The *District-Attorney* read the letters identified by Secretary Blaine, viz., the applications of the prisoner to the President and Secretary of State for an appointment in the diplomatic service.[13]

[13] (a) Dated Riggs' House, Washington, March 17, 1881, to Gen. Garfield, saying that he had written him in October about the Austrian Mission and now that Mr. Kasson had resigned he thought he ought to have it and not be satisfied with the Consulship at Paris.

(b) See Mr. Corkhill's speech, ante, p. 12.

(c) Dated March 21, 1881, to Mr. Blaine, saying: "I think the President feels well disposed towards me about the Austrian Mission and with your help I can get it. Am glad he selected you for his Premier. You are the man above all others for the place."

(d) Dated March 24, 1881, formal application to the President and the Secretary for the Austrian Mission. He says: "I think I have a right to it on account of my services in the election. I ask this as a personal tribute."

(e) Dated April 2, to Mr. Blaine asking for the Paris consulship, saying that "the President and Gen. Logan are willing to leave it to you," that he will get back from Paris in time for the Republican convention of 1884 "and do you marked services."

(f) Dated March 28, to Mr. Blaine, says he understands from

A letter to Mr. Evarts.[14] The speech which prisoner claimed to have delivered during the Presidential campaign entitled, "Garfield against Hancock."[15]

Mr. Blaine. Cross-examined. I cannot say exactly that I was acquainted with him in the sense of acquaintance. He visited the State Department frequently; can hardly claim persons visiting there are acquaintances. I identified the man from time to time as I see him before now. I know there were several puerile letters from Guiteau about speaking in the campaign in Maine. Do not think they can be produced. The debris of a campaign is generally swept away into the waste basket or fire. The general rule is never to take a speaker who applies to speak. Because a man of reputation enough to be of influence is of consequence enough to be sought. The thing had passed out of my mind until my private secretary said that this man had persistently applied to speak in the Maine campaign. I had always treated Guiteau with civility. The Paris Consulate was an office of consequence and I did not consider Guiteau as belonging to the class of men that would be assigned. Though offices are often distributed as a reward of party services and such services are considered in that connection, men who hold conspicuous positions in diplomatic stations are not those who have applications on file for them in the Department.

Mr. Scoville. What was the condition of the Republican party as to uninimity and harmony for six weeks before the shooting of the President? There were differences between the President and some members of the party about matters in New York.

The witness. The President had appointed Mr. Robertson as Collector of Customs at New York and on that there grew up a feeling between him and his administration and Senator Conkling.[16] The two New York Senators, Conkling and Platt, resigned.

Q. Did that struggle generate or keep up the feeling that caused the resignations?

Col. Hooker of the National Committee that he has to have a consulship and hopes it is at Paris as this is the only one he cares for; that Gen. Logan said "I have no objection to your having the Paris Consulship."

[14] See Mr. Corkhill's speech, ante, p. 12.

[15] A wild plea to elect Gen. Garfield or there will be another war between the North and South, ending, "If you want the Republic bankrupted with the prospect of another war, make Hancock president. If you want prosperity, make Garfield president."

[16] CONKLING, ROSCOE (1829-1888). Born, Albany, N. Y. Member of Congress (N. Y.) 1859-1863. United States Senator 1867-1881. Died in New York City.

Mr. Davidge. I must object. The examination is taking too wide a range.

Mr. Scoville. We consider it important to show that there was a quarrel in the Republican party and that instead of being healed it was growing wider, if possible, so that even the death of the President did not interrupt the daily bickerings and strife that existed in which leading men of the country were taking part. We wish to show the extent of the feeling that prevailed in the community in order to show in proper relation the influence that was brought to bear on the mind of the prisoner.

Mr. Davidge. To save time we withdraw any objection.

Mr. Blaine. The termination of it was in the election of the second senator—Lapham. Those factions in the party were commonly designated as "Stalwarts" and "Half-breeds."

Mr. Scoville. Did not this term "Stalwart" date back to the political campaign last year, including Grant, Logan and Conkling? A. While the term is older than that, it became prominent in connection with the Chicago Convention as applicable to the 306 delegates that stood by Grant; it originated before that. I invented the term myself in a despatch to the Boston Herald in 1875. They, after Garfield was nominated, became his supporters. They were Republicans and all Republicans supported Garfield. "Half-breeds" included all the Republicans in New York that were not included among the "Stalwarts". The person appointed as collector was classed with the "Half-breeds". Senator Conkling was a "Stalwart."

Guiteau. In spite of counsel, I have rights here which should be recognized. I want to state my position.

JUDGE COX. You cannot be heard now. The Court is satisfied with your counsel.

Guiteau. But I am not. I think it an outrage to have incompetent counsel forced upon me. Mr. Scoville is doing splendidly. I most distinctly appreciate his services. I want a chance to defend myself and there will be a row all the way through if I don't have it.

JUDGE COX. If you do not keep silence I will have you removed in irons.

Guiteau. I do not care if you do. The American people have something to say about this matter.

Mr. Corkhill. The next witness is the Minister from Venezuela, who by International law is exempt from the process of the Court. But his government in this case waives the diplomatic privilege and instructs him to give his testimony.

Simon Camacho. Am minister from Venezuela here; was at the depot the morning of the murder. Was at the depot to take the train to New York when I saw Secretary Blaine enter with a gentleman whom I did not recognize, as his back was towards me. Heard a pistol and then saw a man firing at another;

recognize the prisoner as the man.

Cross-examined. He wore a slouch hat pulled down over his eyes; people cried "murder" and "lynch him;" he was pale and fear was in his eyes.

Mrs. Sarah B. White. Am Matron of the Ladies' Waiting Room at the B. and P. Depot; saw prisoner walking up and down the Gentlemen's Room previous to the arrival of the Presidential party on July 2. Did not observe the pistol in his hand when I went to the President's assistance. Guiteau was only about three feet back of the President when he fired at him.

Cross-examined. Saw nothing remarkable in the prisoner except that he kept his eyes constantly on the Ladies' Room, as if awaiting the arrival of some one.

Robert A. Parke. Am a Secret Agent in the Depot. Was looking through the window of my office into the Ladies' Room, when the shooting took place. Was not in a position to see the prisoner when he fired the first shot, but saw him move two steps into the Ladies' Room and fire the second shot. I was the first to seize him and put him in charge of two police officers.

Cross-examined. He started to the Ladies' Room, then turned and was facing me when arrested; he wore a slouched hat pulled pretty well over his head; said he had a letter for General Somebody, and that he wanted to go to jail; I caught him by the back of the neck with my right hand and by the left wrist with my left. He didn't make much resistance.

Judson W. Wheeler. Was in the Ladies' Waiting-room at the time of the occurrence. When the first shot was fired the pistol was not more than a few inches from his face and the smoke from the discharge made him cough.

George W. Adams. Am publisher of the Washington Evening Star. Was in the depot when the President and Secretary Blaine alighted from their carriage and stepped into the Ladies' Waiting-room. The President stopped to speak to a policeman at the door, and Mr. Blaine stepped in ahead of him. Did not see the first shot fired but in a few seconds another shot was fired. The President raised his arms and sank gradually to the floor. The man started toward the waiting-room, then turned and was seized by the officers. The whole thing had not occupied ten seconds. He did not seem to be very excited. Understood him to say it was all right, and at first thought prisoner was a countryman trying to quiet the people.

Jacob P. Smith. Am a janitor of the B. & P. Depot. Think it was the second shot which took effect. I was the first who laid his hand upon the President after he fell. He just settled down; his legs gave way; he was very pale and did not say a word; his eyes were open. Did not know whether he was then unconscious. I tried to get him into a sitting position, but could not, so lowered his head, ran to the door and gave the alarm. Nobody was with the President when I left him. Had not seen the prisoner there before the President's arrival.

November 18.

Mr. Scoville asked the Court to take measures to prevent the prisoner from giving unauthorized communications to the public press and his annoying interruptions in the court room.

Guiteau. Mr. Scoville talks one thing to me in private and another thing in public. Last night he spent an hour with me in jail and showed a different spirit from now. I do not propose to put my case in his hands. He is no lawyer and no politician. I want first-class talent on this business and I am going to have it or there is going to be trouble.

Mr. Scoville. I do not propose to be interrupted here by the prisoner every day.

Guiteau. You are no criminal lawyer. I propose to get two or three of the first-class lawyers in America to manage my case.

THE COURT. Silence, prisoner, or you will be removed.

Guiteau. If you expel me from the court room the Court in banc will reverse you. If the Court puts me out (to the officers)—confounded fools you, mind your business; you ain't got no sense.

THE COURT. On several occasions the prisoner has been, on occasions of disorderly conduct, removed from the court. I will not resort to that unless it is necessary; but I admonish the prisoner in advance that if the case requires it, it will be done. You shall be heard at the close of the evidence if you desire it. Until that time you must preserve silence.

Guiteau. I came here as counsel and want to be heard.

THE COURT. You cannot be heard.

Guiteau. If I am convicted the Court in banc will reverse you and give me a new trial. I want two or three of the best lawyers in America and I expect to get them.

Joseph K. Sharp. Am assistant train-master of the B. & P. Railroad. Was waiting to start the limited express; heard two shots fired, hurried into the main waiting-room and found Guiteau in the hands of Mr. Parke with two police officers closing in on him. Parke was shouting: "This is the man," as if he wanted assistance in the Ladies' room. Mr. Garfield was lying on his back supported by Mrs. White, and he gave me a serious, dying look with his eyes fixed. Sent two boys to get police officers to keep out the crowd. When I returned the President had been taken upstairs.

Ella M. Ridgley. The morning of July 2d was standing at the door at the depot; I saw the prisoner. A hackman asked him where he wanted him to drive to; he said to the cemetery and told him to wait there until he came out. This was about four minutes before the President and Secretary Blaine entered. Then saw him in the Ladies' waiting room, draw out a weapon; I did not realize at the moment it was a pistol. After firing, prisoner took two or three steps nearer to the President

and fired a second shot when about four feet away from him. On the first shot the President threw up his hands and half fell back. He kept sinking all the time as the second shot was fired; was not sure whether the second shot touched him. The prisoner then went to the door and I lost sight of him until the officers passed through the room with him.

Cross-examined. When he was talking to the hackman he looked distressed and troubled; had the idea that he was going to the cemetery to visit dead friends. In the hands of the officers he held a paper in his hand; heard him say he wanted it given to General Sherman. He seemed more calm than before he fired the pistol—not so distressed, rather pale. After the second shot he walked to the door, not very rapidly.

Joshua A. Davis. Gateman at the depot, and

William S. Crawford, a driver. Had only a slight view of the prisoner in the crowd, but saw him struggle to get away.

John A. Scott. Am special officer at the depot. Was the first officer to reach prisoner after Parke seized him. Said that he wanted to go to jail and that he had a letter he wanted sent to General Sherman. We took him to the police station. On the way he said: "I am a stalwart and Arthur is now President of the United States." Kept repeating about the letter he would send to General Sherman, and said: "I am a gentleman and a lawyer"; was searched and a packet of papers, some change and a revolver taken out of his pocket.

Cross-examined. He had a fine, bright look in his eyes, but was cool and calm.

Edmund L. DuBorry. Am a civil engineer; saw prisoner in the crowd at the station.

Cross-examined. Thought he had a bad countenance but am unable to state what peculiar features of prisoner had given me that impression. My knowledge of human nature led me to the conclusion that prisoner was a bad character. Have several times expressed an opinion that the man should be hanged.

Patrick Kelly. Am a police officer at the depot. At 8:45 saw prisoner standing with two hackmen; saw the President's carriage stop; the President had his hand on Mr. Blaine's shoulder. The President said to me: "How much time have I, General?" Took out my watch and showed him he had ten minutes. Mr. Blaine got out and then the President and I saluted him. He went to the third step and then turned round smiling, lifted his hat to me and went into the depot out of my sight. Soon I heard the report of a pistol, turned quickly and went to the door; then I heard another report and a scream; first thing I saw was the prisoner coming against me. I grabbed him. He said: "I want to send this letter to General Sherman immediately." "Hold up," said I, "there were two shots fired and you are coming from the direction from which they were fired. I will hold you to know the result." The first man I saw was DuBorry right by my side. Prisoner jerked and pulled me down. I pulled out my club to hit him, but not knowing what the man had done, I did not hit

him but gave him a good shaking and brought him along. Saw Lowry snatch the paper that prisoner held in his hand; then Parke grabbed at Guiteau and threw off his hat. Then Scott got hold of his wrist and twisted it. Guiteau asked him not to break his wrist. Parke said: "That is the man who shot the President." Did not know until then that the President or any man had been shot. Prisoner on the street said: "I did it; I will go to jail for it. Arthur is President and I am a Stalwart." We took him to police headquarters. When I went in I sang out: "This man killed (or shot) the President." Detective Acton said: "You are giving us taffy." Took the pistol out of his pocket and two pieces of silver. He resisted when I took letters from him. Said he wanted them to go to Byron Andrews. Lieut. Eckhoff asked him if he had anything to say. "I have nothing to say," said he. "The papers speak for themselves." Asked him what his name was. He said: "Charles Guiteau of Illinois, a theologian and a lawyer. Don't get excited, take your time, you have plenty of time to search me."

Cross-examined. On the way prisoner spoke to me about his fear of being hurt and I says to him: "Now the quicker you and me get to Headquarters the better for both of us."

Guiteau. Allow me to examine the witness. He came nearer the truth than any one else who has been on the stand. I did not attempt to run at all.

THE COURT. You can only examine him through Mr. Scoville.

Thompson H. Alexander. Saw the shooting. My impression was the President was falling when the second shot was fired about three seconds after the first. Prisoner looked desperately in earnest.

Guiteau. I understand, Your Honor, that Judge Magruder of Maryland is willing to assist in the defense. I hereby publicly invite him to meet me here on Monday at the trial. I have two or three other names I shall mention. Mr. Scoville is doing splendidly but I want him to have help.

John Taylor and *Aquilla Barton,* colored hackmen, swore that the prisoner had bargained about a week before the shooting to convey him to Benning's Station, just beyond the Congressional Cemetery, and that he was to be driven very rapidly. He was fresher than he is now.

Guiteau. I may state here that I had the first square meal today I have had since the 2d of July.

Byron Andrews, correspondent of the *Chicago Inter-Ocean* and *New York Graphic.* Had not received any papers from prisoner; had no acquaintance with him.

Sevillon A. Brown. Am Chief Clerk of the State Department. Prisoner made frequent visits to the department. I gave orders not to send any more cards of his to the Secretary nor to let him see the Secretary.

Cross-examined. Was quite sure the place for which Guiteau applied was quite beyond his reach. He did not look to be the kind of a man who would be appointed to such a position. Excluded his card from the Sec-

retary because it was hardly worth while to take up the Secretary's time. The Secretary had not ordered the exclusion of Guiteau's cards, nor did Guiteau know they were excluded. Had also refused to permit the prisoner to make use of the library of the Department. Did not want to give him any excuse for being there. Wanted to rid the Department of him. Did not notice anything peculiar about him except that he was a nervous individual, and that he seemed to have a reluctance to look one in the eye.

Guiteau. I will look in your eye, Mr. Brown.

Adolphus Eckhoff. Am a police lieutenant. The man seemed frightened on the way to jail, but there was nothing particularly wild about his looks. Heard the man say he was a Stalwart of the Stalwarts, and that he had shot the President to save the Republican party and the country.

J. Stanley Brown. Was private secretary to the late President. Guiteau called very frequently at the White House. I finally, about the 15th May, told the usher that he must no longer trouble the office. Had told Guiteau twice that his application, being in the consular service, must go to the State Department. Identify those letters from Guiteau to the President.

The *District Attorney* read:

March 8, 1881.

General Garfield: I called to see you this A. M., but you were engaged. In October and January last, I sent you a note from New York touching the Austrian Mission. Mr. Kasson, of Iowa, I understand, wishes to remain at Vienna till fall. He is a good fellow. I should not wish to disturb him in any event. What do you think of me for Consul-General at Paris? I think I prefer Paris to Vienna, and, if agreeable to you, should be satisfied with the Consulship at Paris. The enclosed speech was sent to our leading editors and orators in August. Soon thereafter they opened on the rebel war-claim idea, and it was this idea that resulted in your election. Mr. Walker, of New York, the present Consul at Paris, was appointed through Mr. Evarts, and I presume he has no expectation of being retained. Senators Blaine, Logan and Conkling are friendly to me, and I presume my appointment will be promptly confirmed. There is nothing against me. I claim to be a gentleman and a Christian. C. G.

General Garfield: I understand from Colonel Hooker, of the National Committee, that I am to have a Consulship. I hope it is the Consulship at Paris, as that is the only one I care to take. Now that Mr. Phelps has the Austrian Mission, I think I have a right to press my claim for the Consulship at Paris. I think General Logan and Secretary Blaine are favorable to this, and wish you would send in my name for the Consulship at Paris. Mr. Walker, the present Consul, I do not think has any claim on you for the office, as the men that did the business last fall are the

ones to be remembered. Senator Logan has my paper, and he said he would see you about this.

March 26. Very respectfully, CHARLES GUITEAU.

General Garfield: From your looks yesterday, I judge you did not quite understand what I meant by saying: "I have not called for two or three weeks," intended to express my sympathy for you on account of the pressure that has been on you since you came into office. I think Mr. Blaine intends giving me the Paris Consulship, with your and General Logan's approbation, and I am waiting for the break in the Senate. I have practiced law in New York and Chicago, and presume I am well qualified for it. I have been here since March 5th, and expect to remain some little time, or until I get my commission.

April 8. Very respectfully, CHARLES GUITEAU.

General Garfield: I wish to say this about Mr. Robertson's nomination. Would it not be well to withdraw it, on the ground that Mr. Conkling had worked himself to a white heat in opposition. It might be done quietly and gracefully, on the ground that since the nomination many merchants and others in New York had petitioned for the retention of General Merritt. It strikes me that it would be true policy to do this, as Mr. Conkling is so determined to defeat Mr. Robertson, and the chances are that he may do it. It is doing great harm all around. I am very sorry you have got Conkling down on you. Had it not been for General Grant and Senator Conkling we should have lost New York. The loss of New York would have elected Hancock. Mr. Conkling feels you ought to have consulted him about the appointments in his own State, and that is one reason he is so set against Mr. Robertson, and many persons think he is right. It seems to me that the only way out of this difficulty is to withdraw Mr. R., on the ground that since his nomination the leading merchants of New York have expressed themselves as satisfied with General Merritt, who certainly is NOT a "Conkling man." I am on friendly terms with Senator Conkling and the rest of our Senators, but I write this on my own account and in the spirit of a peacemaker. I have taken the liberty of making this suggestion to Mr. Blaine, and wish you and he would give it due attention.

April 29. Very respectfully, Charles Guiteau.

General Garfield. I am sorry you and Senator Conkling are apart, but I stand by you on the ground that his friends, Morton, James, Pearson, and the rest of them have been well provided for, and Mr. Conkling ought to have been satisfied.

May 7. Very respestfully. Charles Guiteau.

To General Garfield: I have got a new idea about '84. If you work your position for all it's worth, you can be nominated and elected in '84. Your opponents will probably be General Grant and

Mr. Blaine. General Grant will never be as strong again as he was just after his trip around the world. Too many people are dead set against a third time, and I don't think he can be nominated, much less elected again. Two National Conventions have slaughtered Mr. Blaine on account of his railroad record and connections. The Republican party are afraid to run him. This leaves the way open for you. Run the Presidency on your own account; strike out right and left. The American people like pluck, and in 1884 we may put you in again. C. G.

White House, May 10.—P. S.—I will see you about the Paris Consulship tomorrow, unless you happen to send in my name today.

General Garfield: Until Saturday, I supposed Mr. Blaine was my friend in the matter of the Paris Consulship; but from his tone on Saturday I judge he is trying to run the State Department in the interest of the Blaine element in '84. You are under small obligations to Mr. Blaine. He almost defeated your election by the loss of Maine. Had it not been for Hancock's blunder on the Tariff, and the decided efforts of the Stalwarts, you certainly would have been defeated after the loss of Maine. You recalled Mr. Noyes for Mr. Morton, and I wish you would recall Mr. Walker for me. I am with Mr. Morton and General Arthur, and I will get them to go on my bond. General Logan and Senator Harrison and the rest of my friends will see that it is promptly confirmed. "Never speak to me again," said Mr. Blaine Saturday, "on the Paris Consulship as long as you live."

Heretofore he has been my friend, but now his eye is on a "Blaine man" for the position, that will help him in '84. Two National Conventions have slaughtered Mr. Blaine, and he ought to see that there is no chance for him in 1884. I want to get in my work for you in 1884. I am sorry Mrs. Garfield is sick, and hope she will recover soon. Charles Guiteau.

May 16.

General Garfield: I hope Mrs. Garfield is better. Monday I sent you a note about the Paris Consulship; Tuesday, one about '84. The idea about '84 flashed through me like an inspiration, and I believe it will come true. Your nomination was a providence, and your election a still greater providence. Had Hancock kept his mouth shut on the Tariff, he would have been elected probably, notwithstanding Grant and Conkling and the treachery of Kelly. Business men were afraid to trust a man in the White House who did not know anything about the Tariff, and this killed Hancock. You are fairly elected, and now make the best of it. With two terms in the White House, and a trip around the globe, you can go into history by the side of General Grant. May I tell Mr. Blaine to prepare the order for my appointment to the Paris Consulship, vice George Walker recalled. Charles Guiteau.

White House, May 13.

Also the letter of May 23rd read by the District Attorney in his opening address.

Cross-examined. Remember two letters written by Guiteau to General Garfield at Mentor. One in October, 1880, and the other in January, 1881; they are probably now among the papers of the estate.

Mr. Scoville. The October letter was dated from New York and was substantially like this: "General Garfield: I am an applicant for the Austrian Mission. I expect to marry a lady of this city of great wealth in a few days."

The Prisoner. Not correct. Better let me reproduce it from memory. I can do it if you want me to. The January letter was a repetition of that. There is no use in putting this gentleman, the witness, to the trouble of hunting up those letters.

James L. Denny. Am in charge of the news stand at the depot; identify the package left with me by prisoner on the morning of the shooting, for Byron Andrews and his co-journalists.

The *District Attorney* read them to the jury.

(1) July 2, 1881. To the White House: The President's tragic death was a sad necessity, but it will unite the Republican party and save the Republic. Life is a flimsy dream and it matters little when one goes. A human life is of small value. During the war thousands of brave boys went down without a tear. I presume the President was a Christian, and that he will be happier in Paradise than here. It will be no worse for Mrs. Garfield, dear soul, to part with her husband this way than by natural death. He is liable to go at any time any way. I had no ill-will toward the President. His death was a political necessity. I am a lawyer, a theologian and a politician. I am a Stalwart of the Stalwarts. I was with General Grant and the rest of our men in New York during the canvass. I have some papers for the press, which I shall leave with Byron Andrews and his co-journalists at No. 1420 New York Avenue, where the reporters can see them. I am going to the jail.

Charles Guiteau.

(2) To the Press and Public: I cannot be interviewed on the President's removal. I have said all I need to in these notes.

Charles Guiteau.

(3) Written on a telegraph blank: To General Sherman: I have just shot the President. I shot him several times, as I wished him to go as easily as possible. His death was a political necessity. I am a lawyer, theologian and politician. I am a Stalwart of the Stalwarts. I was with General Grant and the rest of our men in New York during the canvass. I am going to jail. Please order out your troops and take possession of the jail at once.

Very respectfully, Charles Guiteau.

(4) To The American People: I conceived the idea of removing the President four weeks ago. Not a soul knew of my purpose. I conceived the idea myself and kept it to myself. I read the newspapers carefully for and against the administration and gradually the conviction settled on me that the President's removal was a political necessity because he proved a traitor to the men that made him, and thereby imperiled the life of the Republic. At the last presidential election the Republican party carried every northern state. Today, owing to the misconduct of the President and his Secretary of State, they could hardly carry ten northern states. They certainly could not carry New York and that is the pivotal state.

Ingratitude is the basest of crimes. That the President under the manipulation of his Secretary of State has been guilty of the basest ingratitude to the Stalwarts admits of no denial. The expressed purpose of the President has been to crush Gen. Grant and Senator Conkling and thereby open the way for his renomination in 1884. In the President's madness he has wrecked the once grand old Republican party and for this he dies.

The men that saved the Republic must govern it and not the men who sought its life. I had no ill-will to the President. This is not murder. It is a political necessity. It will make my friend, Arthur, President and save the Republic. I have sacrificed only one. I shot the President as I would a rebel if I saw him pulling down the American flag. I leave my justification to God and the American people. I expect President Arthur and Senator Conkling will give the nation the finest administration it has ever had. They are honest and have plenty of brains and experience.

Charles Guiteau.

(5) Washington, Saturday evening, June 18, 1881. I intended to remove the President this morning at the depot as he took the cars for Long Branch; but Mrs. Garfield looked so thin and clung so tenderly to the President's arm my heart failed me to part them and I decided to take him alone. It will be no worse for Mrs. Garfield to part with her husband this way than by natural death. He is liable to go at any time, any way. C. G.

(6) To the New York Herald: You can print this entire book if you wish to. I would sugest that it be printed in sections, i. e., one or two sections a day. The object is to preach the Gospel. If you do not use it please return it to me through your Washington correspondents as it is the only copy I have. I intend to have it handsomely printed by some first-class New York publisher, but the Herald can have the first chance at it.

Very truly, Charles Guiteau.

(7) Personal Mention. I have been in politics since June, 1880. Before that for two or three years I was in theology. I am the author of a book called "The Truth, a companion to the Bible." Prior to '71 I practised law in Chicago. From '71 to '75 I practised

law in the city of New York. In '75 I returned to Chicago but have practised little since I left New York. Since '77 I have been away from Chicago most of the time although I consider that my home. I have been in New York, Boston and Washington for nearly two years. I was on the Stonington when she struck the Naragansett on my way from Boston to New York, intending to take the stump for Garfield. I was in New York from June till March 5, when I came to Washington. I was an applicant for the Paris consulship. I presume I should have got it as General Logan favored my appointment and the President seemed to favor it and agreed to leave it with Mr. Blaine. Blaine thought the President would not remove Walker, the present consul. I thought he would and the matter was pending at the time of the President's removal. I called to see the President; I sent in my card and the President said it would be impossible for him to see me then. So the matter stood at the time of his removal. This speech was sent to some of our leading editors and orators in August and it may have had an influence on the canvass. It was about the first shot on the rebel war-claim idea.

(8) To Byron Andrews and his co-journalists: I have just shot the President. His death was a political necessity because he proved a traitor to the men that made him and thereby imperilled the life of the Republic. I am a lawyer, theologian and politician. I am a stalwart of the stalwarts. I was with General Grant and the rest of our men in New York during the canvass. I have some papers for the press. I am going to the jail. You and your friends can see them there.—Charles Guiteau.

(9) Washington, Monday, June 20, 1881.

The President's nomination was an act of God. His election was an act of God. His removal was an act of God. (These three specific acts of the Deity may furnish the clergy with a text.) I am clear in my purpose to remove the President. Two points will be accomplished. It will save the Republic and create a demand for my book, The Truth. This book was not written for money. It was written to save souls. In order to attract public attention the books needs the notice the President's removal will give it.

C. G.

George C. Maynard. Am an electrician. Loaned Guiteau $10 in March and $15 in June last. He said he was in debt for his board. Gave me a due-bill which he has not paid.

Guiteau. I do not think it anybody's business whether I owed $25 or some one owes me. Maynard is a good fellow and I owe him $25; that's all there is in it.

Cross-examined. Thought Guiteau looked seedy and hungry and had a sort of skulking gait.

Guiteau. I lived in first-class style and wore a $70 suit of clothes; knew plenty of public men and had all the money I

wanted. I had a big load on my mind about that time.

Joseph U. Burkhart. Am clerk to Mr. Maynard; gave Guiteau $15; saw him the day before the shooting; thought his walk and the way he held his head a little peculiar.

John O'Meara. Am a dealer in sporting goods here. On June 8 sold a pistol to Guiteau. Could not identify it as there were thousands just like it. He asked me how to test its accuracy and I told him to go down by the river and practice.

Guiteau. I desire to announce to the Court that I invited John B. Townsend of New York and Leonard Swett and A. S. Trude of Chicago to assist me. There is plenty of brains on the other side and I desire as much on mine in the interest of justice.

Colonel A. S. Rockwell. I was with the President's party at the station when Mr. Scoville acknowledged the killing.

Guiteau. No your Honor we acknowledge the shooting, but not the killing.

General David G. Swaim. Am Judge Advocate General. Was with the President's wife and daughter at Elberon, N. J., the day he was shot. We returned at once. I remained by his bedside constantly until he was taken to Long Branch, and then until he died, and accompanied the body to Ohio, where it was buried.

Dr. D. W. Bliss. Have been a physician and surgeon for thirty years; took charge of the President at the depot about fifteen minutes after he was shot and until his death.

The witness gave a narrative covering the entire history of President Garfield's sufferings. He detailed at length the progress and symptoms of the case, indicating by means of a wired skeleton the course the ball had taken and the manner in which death had been produced. The immediate cause of death was hemorrhage. The wound made by the ball was the direct cause of death.

Mr. Robinson. State concisely but accurately what was observed on each date from the time of shooting until the time of death. Describe all the symptoms observed each day and also what was done. Begin with the first day.

The witness made the statement, which was interrupted by inquiries and responses, as to the medical consultations held prior to the arrival on 4th July of Drs. Agnew and Hamilton.[17] Mr. Robinson inquired as to the location of the abscess, the incision into the pus sac, the muscles or organs through which the ball passed, the inclination at which the ball struck the spinal column, its force, the fragments of bone that were found during life and at the autopsy and the condition of the wound as discovered in the autopsy.

[17] A small pasteboard box was opened by the District Attorney and a section of a human vertebrae taken out. Holding it up he asked: "Dr. Bliss, do you recognize this?" There was a sensation among the audience as with straining eyes and craned necks they waited for the answer: "I do; it is a portion of the vertebrae of the late President James A. Garfield."

He inquired as to the consultations that were held, up to the arrival of Drs. Agnew and Hamilton, and what was said by the physicians. Dr. Bliss said he could not give that information, but he could state the conclusions, which he did. *Mr. Scoville* inquired minutely as to the formation, growth, and final rupture of the sac formed on the artery, which had been cut by the ball. Also as to who had authorized him to take charge of the case. Witness answered that the request had been made to him on the morning of 3d July, by the President, no one else being present but Mrs. Garfield. *Mr. Scoville* also inquired minutely about the probing of the wound; about the supposed internal hemorrhage the first day; about the pus cavity and the openings made to it, and about the quantity of morphine administered; the probing and washing of the wound, and the possibility of its having been thoroughly probed, if the real track of the ball had been known from the first. Asked by what authority most of the doctors who had been originally in attendance were discharged, witness said it was by authority of the President, given in the presence of Mrs. Garfield and himself. Was asked as to where the ball had been found, he replied that all the viscera had been taken out and placed in a bowl, and that in that bowl the ball was found in its cyst.

Mr. Davidge could only infer from the cross-examination that it was the intention of the defense to endeavor to show that the death of President Garfield had resulted from maltreatment on the part of the surgeons who had charge of the case; it would be a novelty if one human being could put a ball into the body of another, and, when arraigned for murder, defend himself on the ground, that possibly or probably, some other treatment than that adopted by the surgeons called in might have been used to advantage. There was not a shadow of truth in the pretension set up on the other side. But until it was asserted here that the surgeons killed the President, and that the ball planted in his body was not the agent, or at least a contributing agent, any evidence of malpractice was wholly inadmissible.

Mr. Robinson proceeded with the cross-examination, insisting on details and the record of the symptoms throughout, based upon the physician's notes.

Mr. Davidge. What elements of danger are there attending on a wound such as the President's?

Dr. Bliss. The injury to the body of the back-bone and the vertebrae in gun-shot wounds is liable to produce blood-poisoning.

Q. Was the wound mortal? A. Yes.

Guiteau. I understand that there are one or two disreputable characters hanging around this Court. The Chief of Police has kindly given me a guard. I have a body guard. I want to notify all disreputable persons that if they attempt to injure me they will probably be shot dead by my body guard. I have no fears for my personal safety. There has been a good deal of loose talk about this subject for the past week and I want this matter understood.

November 21.

Mr. Robinson. Self respect requires me to notice a statement in the *Post* in which Mr. Scoville finds fault with my line of cross-examination of Dr. Bliss on Saturday looking to the plea of malpractice, and saying that he would ask the court to relieve him of my association. The same counsel who thinks it such a breach of etiquette for me to make without consultation a motion which originally had his concurrence and approval, esteems it no breach of etiquette to announce his concurrence with me in the expediency of my retiring from the case, through the columns of the press. I can have no further association of any kind with such a counsel; no odium attaching to this prisoner, no animadversions of the public would ever have induced me to abandon this defense.

The prisoner. I want Mr. Robinson to stay now.

Mr. Robinson. There is no other alternative. I must ask your Honor to give me an honorable discharge.

The prisoner. That is an able speech, and I agree with most of it. If it had been made last Monday, there would have been no disturbance between us. I sympathize with Robinson; not with you, Scoville, in this matter of malpractice. He has got the true idea of it.

Mr. Scoville regretted that any difficulty had arisen between them, and attributed it to their different dispositions. He complimented Mr. Robinson on the ability which he had shown in arranging the defense, but made no opposition to his retiring.

Judge Cox. The thanks of the Court are due to Mr. Robinson, for the promptness with which he responded to the request of the Court, and participated in this defense, at a great professional sacrifice. I perceived from the start that he was placed in a position of unpleasantness. As Mr. Scoville is thoroughly master of the case, I grant Mr. Robinson's application.

Guiteau. I desire the record to show I appear here as my own counsel. The idea of malpractice is this—that according to the physician's statements, the President was not fatally shot on the 25th of July at the time they made the official examination and said he would recover. If he was not fatally shot on the 25th of July we say that his death was caused by malpractice. My defense here is that it is the Deity's act and not mine, and I expect that He can take care of it. He has taken care of it very well so far.

Dr. Joseph K. Barnes. Am Surgeon General of the U. S. Army; assisted in dressing President Garfield's wound from the 3d July to the 7th September; was present at the autopsy; the wound was mortal and was the cause of Mr. Garfield's death.

Dr. Joseph D. Woodward, acting surgeon, U. S. Army, gave testimony of similar effect.

Dr. D. S. Lamb. Am a U. S. Army surgeon; made the autopsy; the gun-shot wound was the cause of the death; have examined the records; found no cause of an injury to the same extent in which the man had recovered; it was a mortal wound.

MR. SCOVILLE'S OPENING FOR THE DEFENSE.

Mr. Scoville. Gentlemen, the simple question in this case is (for that he committed the act we do not deny), whether he was in such a condition of mind as that he should be held responsible. On this point there would be a great deal of expert and therefore contradictory testimony. You should consider that the experts on the part of the Government are being paid two hundred dollars a day, and that even these scientific men have not reached that height beyond passion and feeling and love of money as that those things could have no influence on their feelings or judgment. But not a single expert witness for the defense would be paid and their testimony, if in favor of the prisoner, would expose them to condemnation and ostracism in the community where they reside. The popular feeling against the prisoner has been manifested in three separate attacks on his life[18]—the last one was being commenced by the newspapers all over the country. The popular feeling will show itself in the testimony of the expert witnesses, so I asked the jury to be considerate and candid toward the defense; do not ask for any odds when it comes to fact, for the defense will erect an impregnable wall and fortress which all the power on the other side cannot overthrow.

November 22.

Mr. Scoville. The defense set up insanity. There was considerable antipathy against, but it is quite as often put forward as a perfectly just defense as it is an unjust one. The prisoner since he has been in Court has done many things which may have influenced you. But you should keep your minds open so that when

[18] Shortly after the prisoner had been taken to prison, the Secretary of War, in view of the public anger and excitement, and the likelihood of a lynching, ordered a company of cavalry and infantry to guard the jail. In a month before the trial began one of the prison guards, Sergeant Nason, when releasing the guard on duty shot at Guiteau through the window of his cell, but missed him. Throughout the trial several guards, in addition to the regular court constables, were specially employed to protect him. Every day between the court room and the jail his appearance was greeted with groans and hisses by people in the streets. Guiteau well understood the danger, for he could never be induced to leave his chair when he was addressing the court or making his speeches to the jury. And this very day as he was being taken back to jail a man on horseback fired a shot into the prison van, inflicting a flesh wound on the prisoner, who crouched down in the bottom of the vehicle and cried to the driver to hurry to the jail, evidently thinking that this was the first act of a mob. The would-be avenger was a prosperous farmer of the vicinity named William Jones.

the sworn evidence is produced you can weigh it and accept what is shown to be the fact.[19]

Ascertain whether he is trying to deceive or not, because if not he is entitled to the protection of the law; it is a very difficult thing to feign insanity so as to deceive experts. The defendant did not know anything about insanity; had never visited an insane asylum and had never given the subject any thought or attention. Yet it was said that he was simulating and the newspapers and a good many people in the community had been as hasty in passing judgment on this subject as on others. The District Attorney has repeatedly said that the prisoner was only feigning insanity. It is absolutely impossible for a man who never knew anything about it to feign insanity so as to deceive an expert.

Guiteau. I never feign, I act myself out, sane or insane.

Mr. Scoville. Having been acquainted with defendant since he was a boy, the first thing I said when I heard of the act was: "He is crazy," just as many others had said, just as President Garfield had said, "What is the man doing; he is crazy;" just as Secretary Blaine had said: "Why was this done? the man must be crazy."

Mr. Corkhill. I deny that President Garfield made such a remark, and Secretary Blaine had stated that he believed him to be sane.

Mr. Scoville. I have seen statements in the newspapers to the contrary effect, and the point occurred to me as an illustration. A person feigning insanity forgets things, and pretends to be muddled and confused. Nothing of that kind could be found about Guiteau. He did not profess to forget anything; on the contrary, he professed to remember everything. A person feigning insanity always felt it incumbent upon him to be insane all the time, while one really insane was in different moods at different times. The former always hesitated in speaking, the latter never. The prisoner did not act like one simulating insanity.

The prisoner is of Huguenot descent, imbued with the religious spirit which led half a million of the best people of France to leave their homes and possessions, and go out in foreign lands. His grandfather was a physician, who settled in Utica, N. Y., over ninety years ago. He had ten children, and some of their very names would show this religious tendency. They were Abraham, Luther (the prisoner's father), Martin (dividing Luther's name between two of the sons), and Calvin. Two of the girls were Julia and Mary. Julia married a Mr. Raymond, who had settled in Michigan, and Mary married a Mr. Parker. Julia was deranged during the last weeks of her life, her delusion being that her family was going to the poorhouse, although her husband was a very successful and prosperous merchant in Ann Harbor. A daughter, Abby, was a bright girl until fifteen, when she began to lose

[19] Here he cited at length from the books the progress of the Courts on the question of insanity.

her reason on the subject of religion. Her first remark to an acquaintance would be: "Do you love Jesus?" She is now in an insane asylum. Another daughter of Mrs. Raymond was partially deformed, one side of her head not being fully developed. These things have weight on the question of hereditary insanity. Mrs. Parker (Mary) afterward married, returned to Oswego insane, and died in that condition. Mrs. Parker had a son, Augustus, who inherited the musical talent of his father and the insane taint of his mother; disappointed in not getting the piano agency of the Decker's of New York, he became insane, was sent to the insane asylum and died there. One of the brothers, Abraham, during the latter years of his life, was not insane but weak-minded, having no control over himself, and died in that condition. The second son (Francis W.) while a young man became disappointed in love and challenged his rival to a duel, but the pistols were loaded with blank cartridges. When he came to know that, his mortification was so intense that he became insane. Another brother, Luther, the prisoner's father, was eccentric and peculier, especially in his religious views, going to such extremes as might propertly be termed insanity. One of his beliefs was that he had come to such a vital union with Christ that he was part and parcel of the Saviour himself, that he would live on forever, just the same as the Saviour. Another time, he imagined that a great Masonic celebration in Chicago was for the purpose of his funeral, and in traveling he refused to go through Chicago, because he did not want any such demonstration made over him.

Now we come to the prisoner himself. His mother was an amiable woman, gentle and affectionate, and his father had the same traits. She had six or seven children, and died at thirty-five. At his birth she was sick with fever, so that the physicians deemed it necessary to shave her head. Afterwards two more children were born, one of them deformed, and both died in infancy. The mother died when the defendant was seven. There was nothing peculiarly noticeable in him when he was young. His father did not give proper attention to the boy, but he grew up bright, intelligent, gentlemanly, gentle and loving. His father married again, and the son helped him in his office of Recorder of Freeport. He could not pronounce the word "quail," but always called it "pail;" so in the little song, "Come along, old Dan Tucker," he would always say: "Ped along". His father one day gave him such a whipping as an intensely religious man can give, and immediately afterward he looked up at his father and said, unconsciously, "Ped along". At eighteen he felt the want of an education and began to think on religious matters. His father believed in the Oneida Community,[20] community of goods and living together.

[20] A religious society established in 1847 on Oneida Creek, Madison County, N. Y., by John H. Noyes. Originally it was strictly communistic, all property and children belonging to the Community,

He had gone from one denomination to another, finding none of them sufficiently advanced to come up to his ideas, and finally struck the Oneida idea. The son wanted to be a lawyer and wished to go to school. He had $1000 left him by his maternal grandfather and finally his father told him that he might take this money and go to school. Thereupon he went to Ann Arbor to enter the University, but he was found unqualified and he went to the high school where he remained for some months, studying at the same time his lessons, his Bible and the doctrines of the Oneida Community. Finally he left school and went to Oneida, where he joined the Community and put his money into it. He fully believed that was the only road to heaven; he stayed there five years. He was convinced that their religious system was the correct one; that it was designed to supplant all the kingdoms of the world, and that he himself was to be the head and ruler of that system. That might be said to be egotism, but insane people were often possessed of extreme egotism. Lawrence, who attempted to assassinate President Jackson, believed that he was entitled to the crown of America and of England, and when he was arraigned in Court he asked why he was brought before such a tribunal. He showed just as much egotism as Guiteau did. The leaders of the Community did not recognize his pretensions, but considered him a very common sort of person. Finally they sat down on him. In April he told them he wanted to go to New York. They fitted him out with new clothes, gave him some books and money and let him go. His idea was to start a religious newspaper which would advocate the principles of the Oneida Community, and revolutionize the world. He went over to Hoboken, where he lived on crackers and dried beef occasionally. His paper was to be a daily and to supplant all other papers. It was to be called the *Daily Theocrat*. He worked on that idea for weeks and months. Of course he had no success and then went back to the Community and remained there until November, 1866. Then he became dissatisfied and went away at night (feeling as though he were going away from the road to heaven) to New York, where he studied theological books, read his Bible and visited the Y. M. C. A. rooms. He then studied law and drifted to Chicago and was admitted to the Bar. The man who passed on his qualifications was C. H. Reed of Chicago. Reed asked him three questions, of which he answered two and missed one. That was the way he got to be a lawyer. His practice soon ran off into a collection business, when he succeeded well and got a comfortable living for himself and wife, for he was at that time married. But he could not transact legal business.

Guiteau. I never had the reputation of being a fool when I was a lawyer. I gave them all they wanted on the other side. Mr. Reed gave me the certificate; General Reynolds, the gentleman

and all marriage restrictions being abolished. But through great opposition to this in the state, marriage and family life were introduced in 1879.

right behind you, made the motion. Go on! Scoville! that is an interesting story and correct in detail.

Mr. Scoville. After the great fire he went to New York, and being a person of most gentlemanly address, pleasant and agreeable, he had no difficulty in going among entire strangers and getting collection business.

At that time and all times he was a gentleman, if being gentle in manner, gentle in speech, kind and considerate, constituted a gentleman. When in New York he never visited saloons, never used tobacco in any shape, never drank spirituous liquors, never visited gambling places and would not talk with any person who used improper or profane language. But in Chicago, in a larceny case, to which he had been assigned, he made such a rambling speech that he convinced Mr. Reed, the District Attorney, that he was insane.

Guiteau. That is absolutely false. I never tried a case with Charlie Reed in my life. But I do not want to interfere with your theory.

Mr. Scoville. His capacity for business (such as it was) began to diminish and he was not able to pay his board, but that was not a capital crime. He had neither the mental nor the physical capacity for hard work.

Guiteau. I had brains enough, but I had theology on the brain. That's the reason I didn't run the law. There's no money in theology, but I am out of that business now. I was always well dressed. I left a $5000 law business to do that kind of work, but you see how I came out. I was doing the same kind of business that St. Paul did. He got his reward after awhile and I expect to get mine from my book.

Mr. Scoville. You will hear how he threatened his sister with an axe. The family physician, Dr. Rice, declared him to be insane, but harmlessly so. He then went to Chicago again. Moody and Sankey were holding meetings and he became an usher. Hearing a minister speak about the second coming of Christ, in January, 1879, he started to lecture upon it. He met with failure everywhere.

Guiteau. I have heard that axe story before, but it is absolutely false. And I wasn't quite a failure either. I dead-headed from Toledo to Washington on the strength of the Lord, and I was only put off twice. I was traveling on my appearance. Not only did I visit Washington, but all the other large cities. I am glad I did it. I was working for the Lord.

Mr. Scoville. His idea was, that if he could not pay his hall rent, neither could the Saviour pay His. He was trying to serve the Lord, and he had to have some place to serve Him in. If he could not pay his hall rent it was not his fault; it was the fault of the people. Everything he ever did was done in earnest, and, therefore, since he has been confined in jail, he has in sober earnest given out items of his life; writing letters to get a wife; that he expected the time to come when the great danger which hangs over his head would be removed; when he would be vindicated, as he calls

it, by your verdict; when he could go out a free man, and could reciprocate such attentions, and could make himself the honored husband of an honored wife. I say that he has done that in good faith, believing everything to be just as I stated. It was no joke with him, and yet the prosecution say that he is a sane man.

Guiteau. It is not true that I think any lady would marry me. I did put a notice in my biography, which the *Herald* published, stating, that any young lady who wished to correspond with me would be properly received. There's no joke about the matrimonial proposition; that's business. I got a response from a lady worth $100,000. That's no joke, I am sure.

Mr. Scoville. I think such evidence is competent.

Guiteau. I never wrote such letters. You have lied. You will not have any success with the Lord by lying. You have lied. I have found you out. When a man lies to me once I never believe him again. You have lied to me once and that is played out.

Mr. Scoville then read letters addressed to Mrs. Scoville and some to himself. Those of the earliest date (1858), showed nothing peculiar, but gradually they drifted into a religious turn, quoting texts of Scripture, and appealing to his sister to turn to God. The first letter, dated in February, 1861, supported the doctrines of the Community. The last letter from Oneida, dated October, 1866, stated that his views had changed; that he desired to leave the Community and go to New York to qualify for a position in some bank, and asking Mr. Scoville to send him fifty dollars.

The prisoner. I was recovering from my insanity then, got up under their influence. I was getting my eyes open then, away from those miserable people. I had been six years subject to their fanaticism.

Mr. Scoville. As a boy he was called Julius, his middle name.

Guiteau. I never liked the name and I won't have it. There is too much of the negro about it.

November 23.

Guiteau. Yesterday I used the word Julius in connection with the negro race. I meant no discredit to the race. The truth is that no prejudice was held 20 years ago. It is getting now so that a colored man is a great deal better than a white man.[20a]

Mr. Scoville. Read Guiteau's letters. The first (1865), stated his purpose of starting a great theocratic daily paper in New York. He said that his paper was to be an illuminator, and to point out the devices of Satan's emissaries. "I claim inspiration. I claim that I am a member of the firm of Jesus Christ & Co., the very ablest and strongest firm in the universe, and that what I can do, is limited only by their power and purpose." The next was from the Chicago jail (1877), where "he had been put by a client about a difference of $20" and asking for help.

[20a] He had evidently recalled that there was a negro on the jury.

Guiteau. I had been on theology for some time, was out of money. A client, a miserable little whelp, had me arrested. I never got much from my father. He got down on me because I left the Community—we could never after agree on that miserable, stinking Community business. I'm mad every time I think of it. It kept me out of fellowship with my father up to the time of his death.

Mr. Scoville. Guiteau's career as a politician shows that his intellect was deficient. His running around from one committee-room to another, seeking to be employed as a campaign speaker, and his failure to obtain recognition, for example.

Guiteau. 'Twasn't because I had no ability, but I was not known. I had the ideas but not the reputation. They wanted big guns like General Grant and Senator Conkling—men who would draw. I presume I'd draw now.

Mr. Scoville. His speech, "Garfield vs. Hancock," was a mere jumble of ideas collected from the newspapers and from speeches of others. No one but a crazy man would have imagined, as Guiteau did, that his speech possessed any merit.

Guiteau. I object to your theory on that score, and when you try to make out that I'm a fool, I'm down on you. I want you to tell the truth, but you needn't try to make me out a fool. I say the Deity inspired my act, and He will take care of it. I want the truth and that's all there is about it.

Mr. Corkhill protested against the interruptions of the prisoner.

Guiteau. 'Tis not necessary to make any remarks, Colonel, just let the matter drop.

Mr. Scoville was willing to join the District Attorney in any measure to attain that end.

Guiteau. I will keep still if Mr. Scoville will only speak the truth. I commend the prosecuting attorneys for the liberal manner in which they are conducting the case.

Mr. Scoville. You have heard his absurd ground for expecting to obtain an office and how Guiteau finally came to the conclusion that the only way to restore peace in the party was to remove the President. I blame the newspapers for bringing him to this frame of mind. The evidence would show that the matter was always preying on his mind, and it became his fixed and firm idea that his duty to his country and God required him to remove the President. This course owed its origin to that office-seeking element of political contest, and the blame of it must be located on modern politics. If the jury find that this man was insane, the same verdict would say that the blame rested on the politicians of the present day. It could not be otherwise.

It has to be determined here, whether your fellowman, with all his misfortunes and all his shortcomings, is to end his life on the gallows. This question will be submitted to you by the evidence, with the confidence that you will do what is right according to your conscience and what will meet with the approval of your countrymen and of your God.

THE WITNESSES FOR THE DEFENSE.

H. N. Barton. Am a clergyman of Illinois, formerly a resident of Kalamazoo. Attended the lecture delivered by Guiteau on "The Second Coming of Christ." Cannot say that my opinion then was that he was so insane as not to be responsible. I thought him not so much deranged as very badly arranged.

Hiram H. Davis. Formerly in Kalamazoo. He knew the family of Wm. S. Maynard, the husband of Julia Guiteau, prisoner's aunt. Knew of her complaining that she would have to go to the Poor House, her husband being a prosperous merchant. Knew her daughter Abby. The boys used to call her "foolish Abby," she was a fool; she was always talking about religion, and always wore a large bonnet.

Thompson Wilcoxson. Knew the father of prisoner intimately from 1840. One peculiarity of his was that he never expected to die. He was always sincere and honest. He first belonged to the Presbyterians and then to the Methodists and relapsed into the Oneida belief.

John A. Rice. Am a physician of Myrtle, Wis. First saw the prisoner in summer of 1876 at Mr. Scoville's house to inquire into his mental condition. Came to the conclusion he was insane on account of hereditary influences and the exaltation of his emotional nature. Detected incoherence of thought and excessive egotism, also an intense pseudo-religious feeling. Was always talking about Christ and Christianity without apparently having become impressed with the moral principles of Christianity. Thought Guiteau ought to be secluded and so told his friends, but before steps could be taken he borrowed some clothes and disappeared. Knew the prisoner's father. Was called to attend him during his last illness, at Mr. Scoville's. Did not observe any delusions, but great obliquity of thought on religious subjects. He frequently exclaimed during his illness that his sickness was entirely unnecessary, that if he had lived with proper faith and had brought himself in proper relations with Christ, there was no necessity for him to be sick, and that he thought he might live forever. Noticed in him petulance and fault-finding to the greatest extent I had ever known.

Frank L. Union (Boston). In September, 1879, prisoner hired a hall from me to deliver a lecture. Told me he had no money but would take up a collection and give me the first $15. His program was, "Do not fail to hear the Hon. Charles Guiteau, the little giant from the West. He will show that two-thirds of the race are going down to perdition." There were about fifty at the lecture. He commenced by reading half-dozen lines and then skipping half-dozen pages. Went on without any connection whatever and in half an hour he left the platform in a hurry and the audience held a conference and agreed the man was crazy.

Cross-examined. The hall was the resort of the liberals, the building having been erected in

honor of Thomas Paine. I volunteered as a witness after reading Mr. Scoville's appeals.

Guiteau. I left in disgust at the audience.

Mary S. Lockwood. Prisoner boarded at my house in Washington for a month, in March, 1881. His reason for leaving was he did not pay his board.

Guiteau. I was there a month. I paid five dollars and owe her twenty. This kind of evidence is irrelevant and I object to it. I presume there were people in the house who thought I was a little cranky. They were too kindhearted and polite to annoy me about board bills; very nice ladies, Christian ladies, good people in every way. General Logan and a lot of high-toned people boarded there. I recommend it as a boarding-house.

Cross-examined. There was nothing peculiar in Guiteau's manner except his abruptness.

Norwood Damon (Boston). Attended the lecture and supposed the man must be insane.

George W. Olds (Traverse, Wis.). Was employed in summer, 1876, on Mr. Scoville's summer place. One day Mrs. Scoville called me and said in presence of prisoner that he was crazy and had attempted to kill her with an axe; told me to put him off the place. He seemed much excited about Mrs. Scoville saying that he was crazy and said that she was the crazy one and that if she were taken away and put in an insane asylum everything would go nicely. Guiteau, when he was set to work to weed turnips and strawberries, pulled up more turnips and strawberries than he did weeds and when he was sent out with a pan of soft soap to soap some apple trees he soaped hickory trees and said they were fruit trees. He appeared like a crazy man. I never changed that opinion.

Cross-examined. Could not say if he did not know the difference between strawberries and weeds and turnips and weeds.

Guiteau. The whole axe business is a lie. That is the short way to put it. I never had any anger towards my sister at all, though no doubt she thought so. As a matter of fact it is all nonsense.

November 25.

Mr. Scoville stated that the prisoner desired to address the Court. Judge Cox gave permission.[21]

Guiteau. I propose to have all the facts bearing on this case go to the Court and the jury, and to do this, I have been forced to interrupt counsel and witnesses who were mistaken as to supposed facts. I meant no discourtesy to them. Any fact in my career bearing on the question who fired the shot, the Deity or myself,

[21] Guiteau began to read from a manuscript without rising. Mr. Scoville requested him to stand up but he firmly declined, stating that he was not afraid to do so. Evidently, in spite of his denial, he feared to make a target of himself.

is of vital importance in this case, and I propose that it go to the jury. I am glad that Your Honor and the opposing counsel are disposed to give a historical review of my life, and ask the press and the public to do likewise. Last spring certain newspapers in New York and Washington were bitterly denouncing the President for breaking up the Republican party by improper appointments. I would like those newspapers to reprint those editorials now, and see how they would look and sound. In attempting to remove the President, I only did what the papers said ought to be done. Since July 2d they have been deifying the President, and denouncing me for doing the very thing they said ought to be done. I want the newspapers and doctors, who actually killed the President, to share with me the odium of his death. I never would have shot him of my own volition, notwithstanding those newspapers, if I had not been commissioned by the Deity to do the deed. But this fact does not relieve the newspapers from the supposed disgrace of the President's removal.

It has been published that I am in fear of death. It is false. I have always been a religious man, and an active worker for God. Some people think that I am a murderer, but the Lord does not, for He inspired the act, as in the case of Abraham, and a score of other cases in the Bible. I warn all cranks of high or low degree to keep away from me under penalty of instant death.

Joseph E. Smith (Freeport). Knew the prisoner's father from 1846 to his death. Was a sincere man, standing well with the community and carried on a good business. He was recorder of deeds and the police magistrate; was excitable on religious topics.

E. O. Foss (Dover, N. H.). Was at the depot when President Garfield was shot; saw Guiteau taken in charge; from his appearance and what he said thought the wrong man had been arrested. He had an indignant look as though people were not carrying out his orders.

Charles H. Reed. Was State's Attorney of Chicago from 1864 to 1876. Recall that prisoner, being assigned to defend small larceny case, a rambling, wandering speech full of vagaries and quite illogical. He talked about theology and divinity and the rights of man. Saw him at the Riggs House the Tuesday preceding the shooting. He asked to borrow $15 promising to pay it when he obtained the Paris Consulship. Said Mr. Blaine was on his side and that in a few days the papers would announce his appointment. Had seen him several times previous; he spoke of the Paris Consulship and became excited when I suggested he obtain some inferior office; thought he was off his balance. Visited him in jail and asked why he killed President Garfield. He made a rambling speech, saying, "I didn't do it, the Lord did it. I was only the Lord's instrument in removing the President." He would show great excitement, striking his fists against the wall, then he would relapse into a quiet state; received the impression that he was of unsound mind.

Cross-examined. Had not told Colonel Corkhill I had no doubt of prisoner's responsibility. I have no recollection of examining him or recommending him for admission to the Bar of Chicago.

Guiteau. I do not want to contradict Mr. Reed because he is a good fellow, but there is not a word of truth in it. You did admit me. You asked me two or three questions. I don't want any trickery.

THE COURT. If there is no other way of preventing these interruptions you will have to be gagged. Keep your mouth shut and don't interrupt again during this trial. I don't desire it, but if the trial cannot go on without resort to gagging it will have to be done.

Mr. Reed. He said that if he did not get the Paris Consulate he would make a fuss about it.

The Prisoner. I never said anything of the kind and I never thought anything of the kind. That is the result of your imagination, Mr. Reed. It is not true. You are a good fellow and I think a good deal of you, but you are mistaken in your facts.

H. B. Amerling. Knew Luther W. Guiteau. He believed that in order to be healed all that was necessary was to believe in Jesus Christ; that the pocket-books of all persons should be open to everyone but that nothing more should be taken out than was right. I considered he was "off" on religions and politics.

Thomas North (Chicago). Was deputy clerk under L. W. Guiteau. He believed in perfect holiness, in inspiration by the Holy Ghost, in immortality on earth by vital union with Christ. Prisoner is an exaggerated facsimile of his father.

The Prisoner. I'm a little larger than he was, a chip of the old block.

North. One day prisoner came to the table late and was spoken to by his father in a peremptory tone; he struck his father on the back, the two clenched and struggled until finally Charles surrendered.

The Prisoner. I don't think there is a word of truth in this talk. I don't remember anything about it and I remember most everything.

Nov. 22.

Guiteau. I notice my friend, Henry Ward Beecher, is doing some cranky work on this case. I used to attend his Church and prayer meetings, and if Your Honor knew him as well as I do you would not pay any attention to him. There are a good many people that think he is badly cranked, socially, and have no doubt that Mrs. Tilton told the truth, and that he lied about it, and I tell him so publicly.

Mr. Davidge. Prisoner, that will do for you.

Guiteau. That's all right, Judge; I have had my say on Beecher, I am satisfied.

John A. Logan.[22] In March last

[22] LOGAN, JOHN ALEXANDER (1826-1886). Born, Jackson Co., Ill. Served in the Mexican war, was a distinguished general in the Civil war, and an unsuccessful candidate for Vice-President of the United States in 1884; member of Congress (Ill.), 1867-1871; United States Senator, 1871-1877, 1879-1886. Died in Washington.

prisoner came to my room twice uninvited, handed me a paper saying, "That speech elected Mr. Garfield President of the United States;" said he had the promise of the Consul-General of France; had seen Mr. Blaine who said it was all right if he could get my recommendation. I said, "I do not know you and cannot recommend you." To get rid of him, I said, "The first time I see the Secretary of State I will mention your case to him." I did not say that I would recommend him but simply that I would mention his case, and I intended to do so, but in a different way from what he supposed. I thought there was some derangement of his mental organization. Said to my landlady, "I do not think he is a proper person for you to have in your boarding-house. I think he is a little off in his head."

George B. Hubbard. In 1863 prisoner worked for the Community. He worked in the same shop with me; he was a nervous, quick-tempered man; if anything was said to disturb him he would get riled and would gesticulate wildly; he would sit for hours saying nothing to anybody. Once he aspired to be the leader of the Community.

Prisoner. There is no physical restraint there, but it is all spiritual and social. If a man left there he was led to believe that he was forever damned. That is the way the Community was kept together.

Edmund M. Smith (Chicago). Was a clerk to the Republican Committee in New York. He wanted to be placed on the rolls as a speaker; he did not appear as if he could put half a dozen sentences together, and I did not think that he had received any assignment to speak.

Prisoner. The gentleman was not in a condition to know whether I did or not. He was only a clerk. Jewell was the fellow who did the business—Jewell and Hooker and Dorsey and the rest of us fellows.

John A. Moss. Saw the prisoner at the Executive Mansion fifteen or twenty times. Thought he was a crazy man.

Mrs. Scoville. Am prisoner's sister. The prisoner is forty years old. Was about seven when mother died. She was sick a very long time; there were two children born subsequently: Luther, who died when he was two years old and was born with a crooked foot and limb, and Julia, who died when twenty months old. Charles was a troublesome child because he was very active and smart; he used the word "ped" for "come" and the word "pail" for "quail." His father punished him for it but that made no difference. He lived with me at Oak Park, near Chicago; attended school there; went back to Freeport and from there to Ann Arbor to school; there abandoned his studies and gave his whole attention to studying the publications of the Oneida Community. I visited him there; he acted like one who had been struck on the head or had partially lost his mind; could not learn from him whether he wanted to leave there.

Prisoner. I had been there three years at that time and right in the heart of their fanaticism.

Mrs. Scoville related his his-

tory, his admission to the bar (at which she was very much surprised), his marriage and his separation from his wife, down to the time he visited her in Wisconsin in 1875. Noticed then a great change in his personal appearance; he was also very hard to get along with and he used to get in a "highfalutin'" state; he seemed willing to do anything that he was told but he got very much befogged and could not do it. He attacked me with an axe; had given him no provocation but was out of patience with him; it was not the axe that frightened me so much as the look of his face; he looked like a wild animal.

Nov. 28.

Mrs. Scoville. He was wild in his ideas and had visionary schemes, such as buying up the *Inter-Ocean*, etc. He spent most of his time reading the newspapers and a Testament which he kept in his pocket; said he was preparing to go in with Moody and Sankey. Finally my son would not stand any more nonsense and put him off the place without my knowledge. I had no doubt whatever of his insanity; his mind was breaking up. He denounced everybody who did not believe as he did and said they were going to hell.

George T. Barrows. Saw the prisoner at Mrs. Scoville's country place; often talked with him about his book and the second coming of Christ till he became violent. One day he dropped a dog out of an upstair window breaking the dog's leg; he said he did not think it would hurt the dog; he supposed it would strike on its feet like a cat. Thought prisoner was either a fool or crazy; he was not sane.

Prisoner. I desire to tell all these crank newspaper men that I appear here as my own counsel. That is my answer to all this silly stuff they have been delivering themselves of for some days past. Some of these newspapers have gone crazy.

Charles S. Jocelyn. Knew prisoner when he was a member of Oneida Community. He was the most egotistical man I ever knew. He was absorbed in himself and had such a high idea of himself as to think himself a superior being qualified to be a leader and a manager of men. Never noticed any insincerity about him. He had a very strong religious bias towards exaltation and even fanaticism. He attempted to deliver lectures there, but they were mainly made up of ideas rehashed from former publications of the Oneida Community.

John W. Guiteau. Am the prisoner's brother (he went over the prisoner's history so far as known to him.) Saw him next in Boston, since have seen him several times here in jail. He insisted on the management of the case and objected to several of Mr. Scoville's ideas as to witnesses. Supposed he might be dangerous and managed to keep him in front of me; thought he might intend to harm me as we had previously had some difficulty. Soon found he was harmless. He said he would get honor instead of dishonor; that it would be "Guiteau, the Patriot" instead of "Guiteau, the Assassin." Said he had acted under an inspiration and was willing to suffer or die for the principle

of inspiration. I said "Are you willing to abide by the decision of the jury and suffer the penalty imposed by the Court if they fail to agree to your views?" said, "I am." I said, "They say you are afraid of your life." "That is not so," he answered, "I do not care a snap for my life." I said, "Which would you prefer, to be hanged by the verdict of the jury or shot by the mob?" "I do not want either," he cried. I became satisfied that he was sincere as to his reason for shooting the President and thoroughly believed in the inspiration. Believe him insane.

Cross-examined. I have not stated to others that I have no doubt of his sanity and responsibility. I believe my brother's case was one of demonism—that he was possessed of the devil. I have stated that I had no doubt of his responsibility before God; that he had chosen evil instead of good.

The Prisoner. My brother and I were not in fellowship with each other for years; he does not come here with the ordinary affection of a brother. We were always at loggerheads on account of his sympathizing with my father for running me into the Oneida Community. That is the secret; I never liked him and he never liked me. I like him better now than I ever did.

Mr. Guiteau. I can say the same as to him. I never thought so much of him in all my life as I do now. He called at my office and complained that I had told persons that he was worthless and would not pay his board bills; that I had no business to make any statement about him or his indebtedness; that I was no better than he was; that I was in debt, which unfortunately was true and we had some strong talk. I told him if he was honest he should not deceive people about his means of paying for his board. He said that he wished to live as Christ did. That Jesus Christ went to a house and if the people received Him He blessed them. That he was working for God, and that he considered God and not himself responsible for his board; we had some further conversation and I drove him to the wall, as I always did in conversation. He said I was no better than he and he said as he went along that I was a thief and a scoundrel; I slapped him on the side of the neck with the back of my hand and he turned around and gave me one on the side of the face, for which I very much respected him.

Prisoner. He never struck me and I never struck him, the rest of the statement is true.

Mr. Guiteau. I took him by the collar and hustled him out forcibly and harshly; I conducted myself as no man ought to who professed a Christian life.

The Prisoner. I never saw my brother from that time till I met him in the jail two weeks ago. That accounts for his poor opinion of me.

Mr. Guiteau. My father was never insane; had heard that Uncle Abraham was insane; my Uncle Francis Guiteau died in an asylum through mortification at fighting a sham duel. Besides Abby Maynard, the daughter of Aunt Julia, and Augustus Parker, who was a cousin, had never heard of any other case of

insanity in the family. I believe at some time in my brother's life, as he had a free will to choose good or evil, he must have, through his wilfulness and his perversity of nature, allowed Satan to gain control over him. On this I base my opinion that he was morally responsible to God but not responsible according to human or legal responsibility, being in one sense insane.

The Prisoner. That's very poor theology and a poor position for you to take.

Mrs. Sarah W. Parker (Chicago). Am the widow of Augustus, one of the sons of the prisoner's aunt Anna. He died in the insane asylum; became insane from disappointment in not obtaining a piano agency which he expected. Prisoner and his wife came to my house in 1876. My little daughter complained that he used to follow her on the street wanting to talk to her and that she was afraid to go out on the street alone; thought him crazy and told me so. I thought his mind was cracked. He had paid attention to my daughter; I did not like to have him come at all.

The Prisoner. They were very poor and I used to go down there and give them money and they appreciated that very much. Incidentally, I became pleased with the little girl who was very smart. She was too young, however.

Fernando Jones (Chicago). In 1878 boarded at the same house with Guiteau. Considered him to be of unsound mind and what some authorities would call in a state of incipient insanity. He was memorizing lectures on Mormonism and the second coming of Christ and talked very incoherently.

Cross-examined, witness said he had paid several visits to Guiteau for the purpose of helping him out of a difficulty in regard to collecting money and not paying it over.

The Prisoner. That part of the statement is incorrect. It was a high-toned place on Michigan Avenue, in Chicago, and I paid my board. Probably he and other people thought I was very cranky at that time.

Mr. Scoville presented a number of prisoner's letters dating from 1857 to 1868 which were identified by him.

Guiteau. This does not look like my present handwriting; there is a decided improvement shown here. This is better than I can do now. This is as fine as steel plate.

November 29.

Mr. Scoville read a number of prisoner's letters to various persons as follows (extracts):

(1) To his sister eulogizing the Oneida Community.

The Prisoner. That is the way my father used to talk about it. I was about seventeen when I wrote that and considerable of a crank, too.

(2) To his sister: "My eternal marriage to Jesus Christ and His people in this world, Hades and the resurrection world, is preeminently paramount to every other attraction."

(3) To Mr. Scoville from the Community: "I have forsaken everything for Christ—reputation, honor of man, riches, fame and worldly renown—all hankering after the things of this world have ceased, I hope, forever. This association is the germ of the kingdom of God, and we expect, without wavering, by the steady, irresistible advance of this association, the conquest of the whole world."

(4) To his father: Expresses his desire to extend the sovereignty of Jesus Christ by placing at his disposal a powerful daily paper. Says he was in the employ of Jesus Christ & Co.; asks his father to send him $100 or $200.

Guiteau. Father didn't send the money; he thought I was badly cranked. That is the way I felt about it. If I had any money or friends I should have had them cleaned out, sure. I recognize it as my work. It was like a retaliation for living at that hole.

(5) To all lovers of virtue: Says the Oneida Community is among the most spiritual despotisms of the nineteenth century; that it constantly violated the sacred laws of God and man; calls upon all good people to frown upon such outrageous practises, upon merchants to refuse to deal with members of the Community and upon the pulpit and the press to denounce them.

The Prisoner. Some of the New York papers at that time sustained that appeal by editorial comments. I am very glad to say the Oneida Community is wiped out now. I was a virtuous man all the time I was there.

(6) To his father from the Chicago Jail: "One of my clients wrongfully caused my arrest; it got into the newspapers and two or three of my other clients got badly scart and have to get $100 to settle with them. If John V. Farwell and other of my friends were not out of town I would not be here five minutes."

The Prisoner. I had been arrested by an infernal little whelp for $20. I was on theology and law together at that time and did not attend to my business. The District Attorney released me. That is all there is to that.

THE PRISONER'S TESTIMONY.

Guiteau (sworn.) (First relating his youthful years as stated by former witnesses.) When I was about ten my father married again, and for two or three years I worked in his office. I wanted an education but he thought the only thing was to save my soul by going into that stinking Oneida Community. The greatest outrage ever perpetrated on a boy was the act of my father in running me into that. I would have gone to school and college and a law school if my father had been out of the way.

When I was eighteen I went to Ann Arbor, against his will, to school but kept reading those Oneida books; he dosed me with them every week so that I ruined my eyes. Sent $900 which he had as my guardian to the Community, and that is the way they got hold of it. I look upon the whole thing as the most distressing

fanaticism ever concocted by the brain of man. They held the theory that if a man left the Community he would be damned. I was in hell anyway, so I went away clandestinely. That old Noyes and his stinking fanaticism had such an influence over me it was all I could do to keep from going back. I went to New York, got acquainted with the Y. M. C. A. and joined Beecher's Church and came gradually under new influences; my mind was awakened to the fanaticism of that hole and the scales fell from my eyes. Noyes claimed that his Community was the beginning of the kingdom of God upon earth; that he was God's partner and that there was no way to be saved except through him. He thought he was greater than the Lord Jesus Christ. Father used to think it wicked to go to church and Sunday-school; he thought he was so holy and good that it was not necessary. When we took a meal we would gather around a table and he would say: "I confess Jesus Christ in food; I thank God for John H. Noyes and the Oneida Community," making Noyes a substitute for the Lord Jesus Christ. He would have gone to the Community except for his wife; my mother would not allow her daughter to go there and that offended old Noyes and he would not allow my father to come. Father was terribly cranky about treating diseases; he said he was in such perfect accord with the Deity, through faith and the Oneida Community, that diseases were something entirely irrelevant to health spiritual, and that if a man was sick it was because the devil had got the start of him; if a member of his family was sick he would go to the bed to excommunicate the devil by talk, prayer and so forth. He believed with the Community in common property; if a man goes there with $10,000, he is not counted any better than a man with ten cents. I had father's belief as to healing diseases; when I was in Oneida, if I had a headache I used to say to the devil, "Go away from me, old devil." The Oneida Communists say a man is sick because he is possessed of the devil. I went to New York intending to establish a great theocratic paper. I consulted with printers and editors and reporters and they discouraged me. Proposed to call it *The Theocrat*, and one of those wise newspaper fellows thought that was enough to damage the paper so I abandoned the idea and went back to the Community, for I was haunted day and night by the idea that I had missed salvation. I read law a few months in the office of Mr. Reynolds, in Milwaukee, and he told me to go and see Charlie Reed, the District Attorney of Chicago, who made out a certificate that I was qualified to practice law. Judge Williams signed the paper as a matter of course. That is the way that I was admitted to practice. Reed asked three or four questions; I think I answered all of them, possibly I may have missed one. I went around among business men and I got business from first-class merchants. I would go up to a man and show him my card and references (I always had good references). If a merchant said to me, "Call in again and I will look up my accounts," I would follow that man right up until I actually got his business. Then I practised law

in New York from 1871 to 1875. If I had not been troubled with the *New York Herald* and had let theology alone I would have done well. Made $1,500 there the first year and $2,500 the second year. Then I had trouble with the *Herald* and got run down and demoralized. I had gone to a hotel one rainy night and had been arrested by an impudent detective who took me to the police station. Was in the Tombs about thirty days at that time, when Mr. Scoville went to District Attorney Phelps and got me off. I was five days in Jefferson Market and thirty days in the Tombs, and was during that time deserted by all my friends—lawyers, who ought to be ashamed of themselves for their desertion. Then in 1875 I went to Chicago and opened a law office and did well. I always could do well at the law business if I stuck to it. Then I got the idea of getting hold of the Chicago *Inter-Ocean*. The stock was very low at that time. The proprietors had sunk all the money they could raise. I presumed the paper had cost them about $300,000 and thought they would be glad to get rid of it for $75,000. I consulted some of my wealthy friends (or supposed friends), but they thought it was not advisable to go into the newspaper business then. After exhausting myself four months I gave it up.

I proposed to make it the great newspaper organ of the West; to put into it the advertising patronage of the *Chicago Tribune*, the Republicanism of Horace Greeley and the enterprise and snap of James Gordon Bennett. If I had got hold of the money it would have been feasible. I applied to Mr. Adams, worth $500,000. I told him I would make him Governor of New York and he said he did not want it; he did not pan out very well after my interview with him; did not have any political aspirations. I wanted to get hold of those fellows who had both aspirations and money; they were the kind of fellows to help me. I also consulted my old friend, Charles Reed; he put $25 into it, which he has not got back yet. I went to theology after that, and that was worse than the newspaper business. I had an idea of publishing the *New York Herald* simultaneously in Chicago. I took steps for securing a building to carry on the newspaper and to obtain printing presses and telegraph despatches. I tried to pick up law business again but found it hard to get any. Then I went out to Mr. Scoville's place in Wisconsin, worked around the house, studied theology and the New Testament, read the papers, soaped trees and all that kind of thing. In October, 1876, I was in Chicago during the Moody and Sankey meetings; attended prayer meetings and services regularly day and night; was an usher and spoke at prayer meetings frequently. There was considerable expectation that the Saviour might soon appear; that set my brain awhirling and I began to investigate it. I dug out my lecture on the Second Coming. The idea of that lecture is briefly this: That the second coming of Christ occurred on the destruction of Jerusalem, in the clouds directly over Jerusalem, that it was an event in the spiritual world, and that the destruction of Jerusalem was the outward sign of His coming; I hold that for all these eighteen centuries the churches

have all been in error in supposing the second coming of Christ to be in the future; that was the result of three or four years investigation on that subject. (He related his various failures in delivering his lecture in a dozen cities, the various times that he was put off railroad cars for not paying his fare, and arrested for not paying his board bills.) In all I did I was, like St. Paul, engaged in the service of God, and God was responsible for board bills. I did not give up lecturing because of my repeated failures, as I was working for the Lord I would do my duty and let Him take care of me as He felt disposed; I went into it to serve the Lord, not to make money; success or failure was nothing to me, that was the Lord's affair; my duty was to continue with my work; Paul had no success, because he had new ideas on theology; I kept thinking of Paul all the time, and how he stuck to his theology.

I went to Boston in 1878 to lecture against Ingersoll;[23] was announced to lecture against "Hell" and drew an immense crowd. People were willing to pay fifty cents to hear that there was no hell, but did not like to hear that there was one. I advocated the existence of hell and heaven, but there were only about a dozen persons present. Then I went around the streets of Boston and sold my lecture. I then went to lecture in Worcester, Hartford, Newark and New Haven but failed, as usual. I got sick and tired and disgusted with the whole business and got my lectures printed in Philadelphia and started West, going around among the merchants selling my lecture. I set them thinking that there was a heaven and a hell and that they were in danger of losing their souls. I started a law office in Milwaukee but soon got uneasy and went to St. Louis. I went about thinking that I was making a mistake, felt haunted with the feeling that I had to preach the Gospel as I understood and nobody went to hear me, and I had no money nor friends and generally had a hard time. In Boston I got out my book, "Truth, a Companion to the Bible." I claimed that I had new light on theology. My views were offensive to Christian people, as Paul's were to the Jews. I traveled around the country on my own account, without money or friends, and had a hard time—about as hard a time as Paul had. I sent the book to leading ministers and advertised it extensively, and yet it fell perfectly flat and I did not sell fifty copies.

That brings me down to January, 1880. I had no money but got on the best way I could, and made up my mind that I would go into politics. I had great interest in General Grant's nomination.

[23] INGERSOLL, ROBERT GREEN (1833-1899). Born, Dresden, N. Y., Removed to Peoria, Ill., 1857, and began practise of law. Entered the army and became a Colonel of cavalry in 1862. Atty. Gen. (Ill.) 1866. He was one of America's greatest orators but opposed the Christian religion and his later years were spent on the lecture platform to which he drew large audiences. Author of "The Gods and Other Lectures," "Some Mistakes of Moses," "Great Speeches," etc.

General Garfield was nominated. Was in Boston but decided I would go to New York and offer my services to the National Committee and take an active part in the election of Garfield. I was on the Stonington when she struck the Narragansett and I thought my time had come then, but it hadn't.

I had my speech, "Garfield against Hancock," in manuscript. I wrote it prior to the Chicago convention, supposing that Grant would be nominated. So I had to write it over to make it fit Garfield.

I went to several places and advertised the speech, but it did not draw. Saw General Arthur and other prominent men at the Fifth Avenue Hotel; they knew me and were glad to see me and all that. A conference was held on 6th August at the Fifth Avenue Hotel. I sent my speech to all men connected with the conference, also to the leading editors of New York. I was only actually assigned once, some time in August, at a colored meeting. I delivered part of the speech and gave the newspaper men the rest. I did not like the crowd. I was in and around the National headquarters on Fifth Avenue almost every day and night except Sunday (they close up on Sunday; they were religious men like myself) from August to November. I consulted with Jewell and Arthur and they were friendly, but no matter how much brains a man had, unless he had reputation they would not choose him; they treated me well and seemed to think I was a good fellow. I was, so to speak, on free and easy terms with them. I called on Garfield, Logan and Arthur and as soon as I mentioned my name they pricked up their ears and said, "Oh, yes, that is a very good speech of yours." After the October elections I wrote to Garfield at Mentor and sent him my speech. I called his attention to the fact that probably I might marry a wealthy lady in New York some time during the ensuing spring, and that I thought we could represent the United States at Vienna with dignity and grace. In January I called his attention to it again. After Mr. Blaine was appointed Secretary of State I knew I had no chance of getting the Austrian mission, because it would go to a Blaine man and I was a Stalwart. I called on General Garfield on the first week after the inauguration. He was with Morton, who knew me, and cordially received me. Garfield, of course, recognized me at once. I marked my name for the Paris Consulship. I wish to say emphatically that my getting office or not getting office had nothing to do with my attempt to remove the President. That was a political necessity under Divine pressure. To Mr. Blaine in the State Department I gave my speech. I saw him five or six times and sent five or six notes on the subject. On my last interview he said rather abruptly, "Never speak to me again on the subject of the Paris Consulship." That hurt my feelings in view of Mr. Blaine's former kindness and pleasant attentions and talk. I said, "I think I can get the President to remove Mr. Walker and I am going to see the President about it." "Well," said Mr. Blaine, "I do not think he will, but if he will"—as much as to say that if

the President wants to remove Walker I will not interfere with him. That was the way I understood it. I had no conversation with Mr. Blaine on the subject after that. I devoted my attention to the President for several days but never had any personal interview with him. I called frequently and would find fifty or a hundred persons hanging around, so I used to write little notes to the President. In one I said, "can I have the Paris Consulship?" The doorkeeper brought me back an answer from the Private Secretary: "Mr. Guiteau, the President says it will be impossible for him to see you today." I understood by that, as soon as he got Walker out of the way gracefully I would be given the office. They never told me I could not get the office, but so far as the Paris Consulship or any other office is concerned it had nothing to do whatever with my inspiration. That was purely a religious necessity done under Divine pressure for the good of the American people. The political situation kept getting bitterer and bitterer and I got worried. I wrote several notes to the President in which I told him he should do something to arrange things and that if he did not run the Republican party would go to wreck and ruin and there would be trouble in this country. I saw this nation was going to wreck.

When Senators Platt and Conkling resigned there was great excitement and I felt greatly perplexed and worried. I retired that evening, greatly depressed over the political situation. Before I went to sleep the impression came on my mind like a flash that if the President were out of the way the difficulty would be all solved. The next morning I had the same impression. I kept reading the papers and had my mind on the idea of the removal of the President which kept working me and working me and grinding and oppressing me for about two weeks. All this time I was horrified and I kept throwing off the idea and did not want to give it any attention at all; but it kept growing on me until at the end of two weeks my mind was thoroughly fixed as to the necessity of the President's removal. As to the Divinity of the inspiration I had not the slightest doubt from the 1st of June to the present moment.

I kept praying that if it was the Lord's will I should not remove the President, He should in some way by His providence interrupt it; that is the way I have always found the Lord. When I feel in doubt I keep praying to the Deity that He may show me in some way I am wrong. I never had the slightest shadow of a doubt on my mind as to the divinity of the act and as to the necessity of it to the great American people, to unite the factions of the Republican Party which were then in a most bitter and deplorable state. If the disruption of the Republican Party was to continue the Democrats and Rebel element would take entire possession of the government and precipitate the country into another war. That was the central idea in the National Republican Committee and on the stump, and by all the leading Republican papers in the canvass, that the safety of the Republic depended upon the Republican Party continuing in control. That the Democratic Party and the Rebel

element were not yet sufficiently civilized to take possession of the national finances. I believed that most emphatically. More than I believe that I am alive. From June 1st to July 2nd I was making my preparations to remove the President and was having my inspiration confirmed every day by the way the newspapers were denouncing the President. I lived in a first-class boarding-house in Washington; I had good clothes, too, and was in very easy circumstances. I spent my time at the Arlington, the Riggs and the Treasury Department, reading the newspapers, praying about the matter, praying the Lord if the inspiration was not from Him, or if there was any mistake about the inspiration, to stop it by His providence. I am not in the habit of talking about my business to anyone. I keep my mouth very tight.

I have always believed in special providences; there are four times in my life when I claim special inspiration—when I went to the Oneida Community; when I left the Community to establish a theocratic paper; when I left a good law business in Chicago to go out lecturing and working for the Lord; when I attempted to remove the President. When I was lecturing around the country two or three times I came near meeting serious accidents but the Lord spared me. Since I have been in jail I have been shot at three times and missed. Last summer, at one time, everybody wanted to shoot me or hang me; it didn't disturb my equilibrium any; the Deity will protect me; He is using these men—soldiers, jury, counsel and Court—to serve Him and protect me; that is my theory about Divine protection. The Lord is no fool and when He has anything to do He uses the best means He can to carry out His purpose. He is using all these men to serve Him and protect me.

I had no ill-feeling against the President; considered him as my political and personal friend. I simply executed what I considered the Divine will for the good of the American people to unite the two factions of the Republican Party and thus prevent another war. My opinion has never changed as to the necessity of the act. The people of this country when they know that another war has been prevented, instead of saying, "Guiteau, the assassin," will some day say, "Guiteau, the patriot." I felt greatly relieved when the thing was over; I felt happy, had not been so happy for weeks as I did when I was in the cell on the 2d of July, and I thanked God that it was all over. I have had an idea in my head for twenty years that I should be President of the United States. I suppose people think that I have been badly cranked about that. I had it in the Oneida Community and I went to Boston with the distinct feeling that I was on the way to the White House, and I shall make it yet. If I am ever President it will be by the act of God. I shall get the nomination as Lincoln and Garfield did, and I shall be elected as they were. I anticipate a decided change of public opinion as regards me.

THE COURT. Mr. Scoville, confine the witness to the narrative, if you please.

Guiteau. I don't care now a snap of my fingers about being President. I don't know that I should take it now if I were actually nominated and elected.

THE CROSS EXAMINATION BY MR. PORTER.

Guiteau. I am a man of truth, most decidedly I am in dead earnest in anything I do. I was converted at seventeen and am a Christian man; have had no bad habits.

The prisoner was then cross-examined in regard to his business as a lawyer in Chicago and New York, the result of it all being that he only had some collections cases in Chicago and a similar kind of business in New York, mixed up with some stray jobs in connection with getting prisoners out of Ludlow Street Jail, for which jobs he paid a commission to a prisoner in the jail, who was a big talker and who would recommend him to other prisoners. He admitted that he was behind in his office rent in New York, and perhaps in some of his collections, but thought that one thousand dollars would pay all those debts, together with his board bills.

When General Logan swore he did not say he would not recommend me, I do not say he did not tell the truth; but he made me think so; that's the way all these politicians do. Perhaps I said to officer Scott on leaving the depot, "General Arthur is now President."

Mr. Porter. Who bought the pistol, the Deity or you?

The Prisoner. The Deity furnished the money with which I bought the pistol. I was agent.

Mr. Porter. I thought it was somebody else who furnished the money.

The Prisoner. It was the Deity who furnished the money with which I bought the pistol.

The only inspiration you had was to use the pistol on the President?

The inspiration consisted in trying to remove the President for the good of the American people and all these details are nothing to the case.

You did not succeed in executing the Divine will?

I think the doctors finished the work.

The Deity tried and you tried and you both failed, but the doctors succeeded? A. The Deity confirmed my act by letting the President down as gently as He did. Q. Do you think it was letting him down gently to let him suffer that torture, over which you profess

to feel so much solicitude, during those long months? The whole matter was in the hands of the Deity, and I do not want to discuss it any further; I appreciate the fact of the President's long sickness as much as any person in the world; but that is a very narrow view to take of the matter.

Did the Deity give you a commission in writing? No, sir.

Did He give it in an audible tone of voice? He gave it to me by His pressure on me.

Did you contemplate his removal otherwise than by murder? I do not like the word "murder." I know you do not like the word "murder," it is a hard word, but it is there.

The Prisoner. I do not recollect the actual facts in the matter. If I had shot the President of the United States on my own personal account no punishment would be too severe or too quick for me, but acting as the agent of the Deity, that puts an entirely different construction on the act, and that is what I want to put to the Court and jury and to the opposing counsel. I say that the removal of the President was an act of necessity from the situation and for the good of the American people. That is the idea that I want you to entertain, and not to settle down on the cold blooded idea of murder, because I never had the first conception of murder in the matter. I think the American people may some time consider themselves under great obligations to me.

Mr. Porter. Were you under great obligation to the Republican Party? Not that I know of. Did the Republican Party ever give you any office? I never held any kind of political office in my life. I had some thought about the Paris Consulship. That is the only office I ever had the slightest thought about. That was the one that resulted in the inspiration of murder? No, sir, my getting it or not getting it never had the slightest effect upon my mind in attempting to remove the President. If the political necessity had not existed, the President would not have been removed by me.

Q. In an address to the American people, which you intended should be found on your person after you had shot him, you said, "I conceived the idea of removing the President four weeks ago." Was that a lie? I conceived it, but my mind was not fully settled on it. There is a difference between conceiving a thing and actually fixing it in your mind. You may conceive the idea of going to Europe in a month and yet you may not go. That is no point at all. I was resisting it with all my might and strength and prayer. I prayed that if wrong the Deity would stop me. Just please take that in.

Mr. Porter. You say in your letter to the President: "Mr. Blaine is a wicked man, and you ought to demand his immediate resignation. Otherwise you and the Republican Party will come to grief."

The Prisoner. Political grief, not physical grief; every intelligent man will see that I meant political grief. That was a mere flash which had not taken shape or form in my mind and did not take shape or form for over two weeks; all that time I was resisting the idea. I was finding out during those two weeks whether it was

God's will or not; at the end of the two weeks I made up my mind that it was His will, and that it was for the best interests of the American people. That is the way that I get inspirations. I wanted to know whether it was the Deity that inspired me; I kept praying that the Deity should not let me make any mistake about it, and the Deity has not made any mistake about it.

Mr. Porter. Why did you have doubts about it? Because all my natural feelings were opposed to the act. You regarded it as murder, then? So-called, yes; it was not murder for me; all my natural feelings were against it. Were you aware that it was against human law?

December 1.

Guiteau. I claim the attention of the audience while I make an appeal for money to be used in my defense. I have friends who are interested in the cause of justice and they can send any sum from five dollars to a thousand to Mr. Scoville. I do not recall ever striking a man. I have always been a peace man. Naturally I am cowardly; have kept away from physical danger, but I am morally brave and determined, especially when I am sure the Deity is back of me. He desired me to remove the President for the good of the American people.

Mr. Porter. Did the Deity use the word "remove"? A. It is the way it came to my mind; if two men quarrel and one kills the other and there is malice, this is murder. I say the doctors killed the President, not I; they were guilty of murder.

Q. Were Mason and Jones guilty of a murderous assault? Most decidedly, because they made an assault on a citizen of the Republic. They should be punished without they can show that they acted as agents of the Deity; if they were executing the Divine will they should be set free. I am not afraid of you, Judge Porter. I know bigger men than you; I have seen you shake your finger before in New York; I am not afraid of you.

Mr. Porter. Do you believe in the Ten Commandments? Yes.

Q. Have you higher evidence that the Supreme Ruler of the universe said to you "Thou shalt kill" than you have that He said "Thou shalt not kill"? There was no more murder in the matter than it was to kill a man during the war. It is altogether too sacred a matter to make light of and I will not have it. Now you know my position just as well as if I had been talking six weeks about it.

Mr. Porter. When you told the police officer you had shot the President had you forgotten that the Deity was the one who had shot him and that He commanded you to do it? I do not want to discuss that matter with you any further; I want you to know that when I speak of myself I always associate myself with the Deity; there it no use splitting hairs on that point.

Questioned with regard to the different boarding-houses at which he had lived in Washington, he said: "I decline to go into this boarding-house business. It has no bearing on this case. I suppose I owe $150 in Washington to these genteel ladies, and some time or other I expect to pay them. When I have money I pay my debts,

and when I have not I can't pay them; that's all there is in it. (Pressed as to how he proposed to raise the funds which he said he was expecting to receive.) I intended to borrow it from some of my friends. I'll tell you, Judge, how I borrow money. It may be of service to you when you want to borrow for yourself. I don't lie or sneak, but go right up to a man and ask him for what I want, and if he has got it, perhaps, on the impulse of the moment, he will give it to me; if not, that's all there is to it.

Mr. Porter. After you bought the revolver, being unused to firearms, did you practice with it? I went down and fired it off over the river just to get used to the outward act of handling it. I knew no more about it than a baby. When I went to buy it I looked at it and it kinder scared me; the man in the store loaded it.

When did you begin watching the President's movements? About the time he and Mrs. Garfield went to Long Branch. I did not go near the White House grounds. I used to sit in the park opposite. At any time I would have executed the Divine will from the middle of June until the time I actually did shoot him. The Deity uses certain men to serve Him; He is using this honorable Court and this jury and these police and these troops to serve Him and protect me. I leave my justification to God and the American people—principally to God and second to the American people.

Mr. Porter. Suppose he had appointed Mr. Conkling as Secretary of State, would you have killed him? The Republican Party would not have got in any such snarl if Conkling had been Secretary of State. Q. Did you not lie to Mr. Blaine? I simply made the suggestion that if he assisted me in the Paris Consulship I should feel bound at the National Convention to assist him. That is the way politicians get on—you tickle me, I tickle you. Q. Did you write to President Garfield: "Until Saturday I supposed Mr. Blaine was my friend in the matter of the Paris Consulship"? Yes, and that is the truth about it. I hit him square there and that is the reason why Blaine went back on me; because I was a Grant man and he thought he would put a Blaine man in the Paris Consulship. What possible ill-will could I have had against Garfield? Blaine was the man to have shot according to your theory; my not getting the office had nothing to do with it whatever. It shows how absurd and nonsensicle your theory is. General Garfield went and sold himself soul and body to Mr. Blaine. He did not appreciate the sentiment and kindness of those letters and threw himself into Blaine's hands and allowed Blaine to use the Presidency to destroy Conkling and Grant.

Mr. Porter. Did you not say in your letters "life is a fleeting dream, and it matters little when one goes"? Those are my sentiments. Does it matter much to you when you go? I have got no great fear of death; you are liable to die in five minutes, and so is everyone in this Court House. The only question is whether you are ready to die. Did you say in your letter: "I presume the President was a Christian, and he will be happier in paradise than here"? I did, and I am sure the President is a great deal happier

at this very moment than any man on earth. You have no doubt that when you killed him he went direct to paradise? I believed him to be a good Christian man. And you believe that the Supreme Being who holds the gates of life and death wanted to send him to paradise for breaking the unity of the Republican Party, and for ingratitude to General Grant and Senator Conkling? His Christianity had nothing to do with his political character. His political record was very poor, but his Christian character was good because he was a good man as far as I know. The Deity seemed to be on my side and everybody else against me. Some of these bitter crank papers have been toning down wonderfully for the last three or four weeks. They want conversion. They want new ideas about the President's removal. Nothing but a change of heart will satisfy their diabolical thirst for blood. It is not likely that the Deity will gratify them in their thirst for blood. I suppose there were a thousand men in the Republican Party who would have shot General Garfield if they had the chance and had got the nerve, and the brains and the opportunity to do the work.

Mr. Porter. Did it occur to you that there was a commandment, "Thou shalt not kill"? The Divine authority overcame the written law. Was there any higher Divine law than that spoken on Sinai? Indeed there was.

Q. Did you walk back and forth in the depot watching for him? Yes, I was working myself up, for I knew the hour had come. Was it necessary to do that to obey God? It was all I could possibly do to do the act any way, and I had to work myself up to do it. I had to obey the God Almighty if I died the next second.

Mr. Porter. You wrote that you would have killed the President on June 18th if it had not been that Mrs. Garfield was with him. My heart would not allow me to remove him in the presence of Mrs. Garfield, she was a sick lady and the shock might have killed her. That was my reason for not doing it. I only had authority to remove the President. I felt very sorry for her; remarkably sorry for his children and for everybody; I was grieved that it was necessary to save the Republic from another war and it has saved the country from another war. What was the necessity of requesting General Sherman to send troops to the jail to protect you for having obeyed the Deity? I would have been shot and hung a hundred times if it had not been for the troops in the jail.

Mr. Porter. You wrote that Garfield's nomination, election and removal were acts of God. Who nominated him? The Chicago Convention. Was that inspired? I thought that Grant or Blaine would be nominated and when Garfield was nominated on the thirty-sixth ballot it was an act of God. Was the Chicago Convention inspired? In a certain sense it was. In the same sense that you were? No, sir; I had a positive and direct inspiration.

December 2.

Mr. Porter. Was it one of your purposes in killing the President to create a demand for your book? Yes, to preach the Gospel as set forth in my book. You regard your book as the Gospel? It is a collateral Gospel; the book is the Bible brought down to the present day; it comes from the Deity. I express myself sharp, pointed, sententious. If you would like to see a specimen of that kind of style look through my book.

I take my chance before this Court and the jury on the fact that the Deity inspired the act. I am not a fool, and the Deity never employed a fool to do His work. He put it into my brain and heart, and left me to work it out in my own way. I was the predestined man from the foundation of the world to do this act, and I had to do it. Napoleon thought he was a man of destiny though he had different work from me. I am a man of destiny as much as the Saviour, or Paul, or Martin Luther or any of those religious men.

Mr. Porter. Do you believe the devil tempts men? He tempts them to do evil and that is the reason when pressed to do a thing I first question whether it is the devil or the Deity. If the political situation had not existed then I should have said that it was the inspiration of the devil. But the political situation required the removal of the President for the good of the American people and that is the way I knew it was the Deity and not the devil. And it was in view of the political situation that you made up your mind to murder? Don't use that word murder; you are entirely too free with that word, Mr. Porter. Are you not on trial for murder? So it is said; can't you use the proper word, removed? Your defense is that you are legally insane and not in fact insane, is it? The defense is that it is the Deity's act and not mine. Are you insane? A good many people think I am badly insane. The Oneida people thought so, my father thought so, and my relatives thought so and still think so. I am not an expert, let the experts and the jury decide whether I am insane. Did you expect at the time you shot the President to be tried for it? I had no expectation about it. My only thought was to execute the Divine will and let Him take care of me. I would not have been deterred from the act if I had known I should be shot in five minutes.

Mr. Porter. What did you do on the day you killed him? I slept the previous night at the Riggs House; I rose early and sat in Lafayette Park some time before breakfast; after breakfast I went to my room and got my revolver. A little before nine I went to the depot and had my boots blacked. Blaine and the President drove up in Blaine's carriage which showed how much the President was under Blaine's influence; Blaine was blowing and blowing and the President was listening; they were on the most intimate relations; they walked into the depot and passed within a few feet of me. I drew my weapon and fired twice and hit him once.

Mr. Porter. And from that hour to this you have never felt

regret or remorse? I regret giving pain or trouble to anyone, but I have no doubt as to the necessity of the act or the divinity of the act. Of course, I feel remorse so far as my personal feelings are concerned; I feel remorse as much as any man and regret the necessity of the act. My duty to the Lord and the American people overcame my personal feelings.

December 3.

Dr. Alexander McNeil (Columbus, O.). Saw prisoner several years ago when he was trying to lecture and sell his book. Said it was one of the finest productions that ever eminated from an inspired pen. I told my friends I thought he was a lunatic. He seemed to be badly balanced.

Emory A. Storrs.[24] Saw prisoner a number of times in different cities; told me once he was going to have the Austrian mission; that he was solid with Blaine; am not an expert on insanity. Can express no opinion as to his sanity. My impression was that he had an illy-balanced judgment and an illy-balanced mind and did not have what the average man would call good common sense.

Cross-examined. Have never seen anything in Guiteau which led me to believe that he could not distinguish between right and wrong. I said to Mr. Scoville in Chicago that I thought Guiteau was "off his nut."

Edward A. Daniels. Met the prisoner at the Y. M. C. A. and thought his conversation and movements peculiar.

David Davis.[25] I am not connected with either of the political parties of the country. The Republican Party has not been destroyed and yet there have been breaches in it. There is only one way in which the Republican Party can ever be destroyed, that is by the disruption of the Democratic Party. I do not think that the success of any political party would imperil the Republic. The success of the Democratic Party would not tend in any degree to bring on another civil war. The southern people are the last people in the world to desire to go into any war. If there be any war it will come from somewhere else than the south. I never saw the prisoner before and know nothing of the matter.

The Prisoner. I want these persons subpœnaed, to show the political condition of the country last spring: President Arthur, General Grant, ex-Senators Conkling and Platt, Jewell, Rob-

[24] STORRS, EMERY ALEXANDER (1835-1885). Born, Hinsdale, N. Y. Studied law at Buffalo and admitted to bar there 1885. Removed to Chicago 1859; became a leader of the bar there, a successful advocate and a political orator of national reputation. Delegate at large to the Republican National Conventions of 1868, 1872 and 1880.

[25] DAVIS, DAVID (1815-1886). Born, Cecil Co., Md. Associate Justice Supreme Court of the United States 1862-1877; U. S. Senator (Illinois) 1877-1883; Vice-President 1881-1883. Died at Bloomington, Ill.

ertson and Dorsey, and Senators Jones and Logan; Mr. Reid of *The Tribune*, Mr. Jones of *The Times*, Mr. Dana of *The Sun*, and Mr. Hurlburt of *The World*, Mr. Gorham of *The Washington Republican*, Mr. Hutchins of *The Washington Post*, and Mr. Nixon of *The Chicago Inter-Ocean*. I presume your honor will order this.

December 5.

The Prisoner. Before the experts begin I want to submit the point upon which I wish them to pass. When a man claims that he is compelled to do an illegal act from a power beyond him which he cannot control, where his moral agency is dominated, I want these experts to say whether that is insanity or sanity.

James P. Kiernan. Am a practicing physician; was managing eidtor of the *Chicago Medical Review* and lectured on mental diseases in the Chicago Medical College; have made a study of mental diseases since 1874.

Mr. Scoville submitted the following hypothetical question: Assuming it to be a fact that there was a strong hereditary taint of insanity in the blood of the prisoner at the bar; also that at about the age of thirty-five his own mind was so much deranged that he was a fit subject to be sent to an insane asylum; also that at different times after that date during the next succeeding five years, he manifested such decided symptoms of insanity, without simulation, that many different persons conversing with him and observing his conduct believed him to be insane; also that in or about the month of June, 1881, at or about the expiration of said term of five years, he became demented by the idea that he was inspired of God to remove by death the President of the United States; also that he acted on what he believed to be such inspiration, and as he believed to be in accordance with the Divine will in the preparation for and in the accomplishment of such a purpose; also that he committed the act of shooting the President under what he believed to be a Divine command which he was not at liberty to disobey and which belief made out a conviction which controlled his conscience and overpowered his will as to that act so that he could not resist the mental pressure upon him; also that immediately after the shooting he appeared calm and as if relieved by the performance of a great duty; also that there was no other adequate motive for the act than the conviction that he was executing the Divine will for the good of his country, was he sane or insane at the time he shot the President?

Dr. Kiernan. I should say that the prisoner was insane. My opinion is based upon the strong hereditary tendency, upon the impairment of the prisoner's judgment and his moral excitement and his strong conviction that he had a mission from God to fulfill in the removal of the President. Do not think that a man believing himself commissioned by God would bear himself very differently from a sane man. He

would be governed in a general way by his own specific characteristics.

The Prisoner. The Lord injects an inspiration into my brain and leaves me to work it out in my own way. That is the way I get my inspiration. God does not employ fools to do His work. He gets the best brains he can find.

Mr. Davidge. Suppose a man told you that he had an inspiration to slay a ruler and you watched his conduct and behavior and it turned out to be that of a vulgar criminal all the way through, what would you think of his statement that he had a Divine commission?

Dr. Kiernan. If I assume the condition of things you state, I answer I would not have given any weight to his declaration; progressive paresis produces physical changes.

The Prisoner. What is the English of that, doctor? We are all common folks here and cannot understand that scientific language.

Dr. Kiernan. This is a form of insanity attended by very strongly marked physical and mental symptoms. A man who was penurious would suddenly become extravagant and spend his money lavishly. It is also attended by a strong tendency to believe himself immensely strong, at the same time his walk would become tremulous and he would have frequent disturbance of gait. An inequality in the two sides of the head is an evidence of hereditary insanity.

Guiteau. That hits my case exactly. One side of my head is larger than the other. Doctors examined me the other night.

Mr. Davidge. What is the proportion of insane people to sane people in the world?

Witness. Probably out of every twenty-five persons in ordinary life, five are insane, and sooner or later they become inmates of insane asylums. If I talk with twenty-five ordinary business men I would probably find five of them insane.

Mr. Davidge. Gentlemen of the jury, at least two of you are doomed.

Prisoner. That may take you, Davidge.

Dr. Kiernan. There are a large number of men who, while not positively insane, are deficient in judgment and cannot be classed with properly well balanced men. There are three times as many persons outside of asylums as there are inside who are proper subjects for insane asylums.

Richard J. Hinton (Washington). Saw prisoner frequently at the rooms of the Republican Committee; have also read his speech of Garfield vs. Hancock; thought it ill-jointed and utterly inconsequential. He was the laughing stock when he was not a nuisance to everybody.

Guiteau. I recall you as a nuisance about headquarters. Scoville, if you put any more of these cranky fellows on the stand I will blow you up again. You had no business to call David Davis. That was a great piece of impudence. I don't take any stock in this kind of business.

Dr. Charles H. Nichols. Am superintendent of the Bloomingdale Asylum; been connected

with insane asylums since 1844; have been connected with the New York State Lunatic Asylum at Utica, with the Government Hospital for the Insane for the District of Columbia. Taking that hypothetical case to be true, the person described was insane.

Guiteau. The witness has struck a very important idea, to-wit, that the Lord interjected the idea into my brain and then let me work it out my own way. That is the way the Lord does. He doesn't employ fools to do his work; I am sure of that; he gets the best brains he can find.

Dr. Charles Folsom, of Boston; *Dr. Samuel Worcester*, of Salem, Massachusetts; *Dr. William W. Golding*, Superintendent of the Government Hospital for the Insane at Washington, D. C.; *Dr. James H. McBride*, of the Insane Asylum at Milwaukee; *Dr. Walter Channing*, of Brookline, Massachusetts; and *Dr. Theodore W. Fisher*, of Boston, said that on the assumption that the facts in the hypothetical question were true, they considered the prisoner insane.

The Prisoner. My memory is remarkably good. There is no simulation about me. I go straight. That is all there is in this case. I rest my entire case upon the idea that I was inspired by the Deity and I won't allow any other defense to go in. I mean by inspiration the interjection of Divine power into my mind. That is what I mean by it.

December 6.

The Prisoner. I want to say here that I want to have here as witnesses General Grant, Senators Conkling and Platt, Governor Jewell and those other men who were doing politics last spring. I want to show by General Grant the personal feeling that he had towards President Garfield last spring, when he wrote his letter to Senator Jones, showing a very bitter spirit towards the President. I want to show that neither Grant nor Conkling nor Jewell would go to the White House; I was on friendly relations with these men. The inspiration which came to me for President Garfield's removal arose from the political situation, and I want to keep thumping that into the ears of the civilized world; it is very important for me to have these men examined in this defense. Mr. Scoville has altogether too narrow a view of this matter. He is a good man, but he is no politician, and he is no criminal lawyer; he has done remarkably well considering, but he is not an expert. Mr. Storrs, of Chicago, one of the most brilliant members of the American Bar, says that I have got the true theory of this defense. He does not take any stock in Scoville's theory that I am a fool. He says also, that I am the ablest lawyer in this case, and I shall not quarrel with him for his opinion. I should be highly pleased if President Arthur would recognize Mr. Storrs' services and make him Attorney General. He is a man of brains and a true-blooded Republican and would do honor to the nation in that position. I make one suggestion publicly to President Arthur. I have not asked him for any favors, and probably shall not; but I feel authorized to make this sugestion about Mr. Storrs.

Charles B. Farwell[26] (Chicago, Ill.). Prisoner came to my office about seven years ago and showed me a lot of writing which he said were editorials, and wanted to borrow $200,000 to start a newspaper, promising in return to make me President of the United States.

Guiteau. You told me you would put in $10,000, but you never put in a cent.

Mr. Farwell. Of course I refused, as I did last March when he asked me to sign a recommendation for a Foreign mission. I did not think him exactly sane, but thought he knew the difference between right and wrong.

George C. Gorham. Am an editor. Have read the speech, Garfield vs. Hancock. Think it a pretty good statement of the situation as viewed by a good many people.

Mr. Scoville. I have issued a subpoena for President Arthur[27] by whom I expect to prove that Guiteau has written him letters in a familiar style as one equal or friend to another, when he had no sane grounds on which to do so.

Guiteau. You had never anything to do with those high-toned men. You do not know how to act with them. You had been always away down in the dirt. You have got no political record. You ought to have stayed in Chicago and not come into this case. You have no capacity for this kind of business. What do you know about it? You will not sit down on me any more.

Mr. Porter. The proper way would be to send him interrogatories. The President should not be summoned here.

THE COURT. Prepare your questions.

Guiteau. I am very sorry that I could not get Storrs into the case. Storrs is a politician and one of the most brilliant men at the American Bar. Scoville is doing well enough on his theory, but his theory is too narrow on this kind of business. That is all the trouble with him. It requires a first-class artist to do this fine work.

Mr. Scoville began to read to the jury the prisoner's book, Truth.

Guiteau. Do not read it like a schoolboy, read it with spirit. Let me read it. (The Court consented and the prisoner read it until the adjournment—several hours.)

[26] FARWELL, CHARLES B. (1823-1903). Born, Painted Post, N. Y. Removed to Chicago 1844; County Clerk 1853-1861; became member of firm of John V. Farwell and Co. 1864; Member of Congress 1870-1882; United States Senator 1887-1891.

[27] ARTHUR, CHESTER ALAN (1830-1886). Born, Fairfield, Vt. Grad. Amer. Coll. 1848. Admitted bar and practised in New York City; Army Quartermaster-General (N. Y.) 1862; Collector of Customs (N. Y.) 1871-1878; Vice-President U. S. 1880; President 1881-1885. Died in New York City.

In REBUTTAL.

December 7.

General W. T. Sherman. On receipt of prisoner's letter (see ante p. 31), I called out four companies of soldiers, fearing that the shooting was part of a general conspiracy; on investigation I was convinced it was the act of one man alone.

Edward P. Barton, Smith D. Atkins, A. T. Greene, Gardner W. Tandy, Benjamin T. Buckley, J. S. Cochran, George W. Oiler, Anson A. Babcock, David H. Sutherland, Horace Tarbox and *W. S. Caldwell,* citizens of Freeport, Ill., who knew the Guiteau family there, testified that the father was a clear-headed business man, public spirited and that they never observed in him any sign of insanity, or in any other of the family.

Guiteau. All these witnesses, it will be observed, knew about my father's business affairs. They know nothing about his social and religious character. I am sorry my half-sister Flora's name was mentioned in this case. I know she is a high-toned lady and stands well in Freeport. I send her my greeting. I am very glad that General Arthur has rapped those miserable Mormons, and I hope he will do it again. I want him to make it a specialty of his administration to destroy Mormonism. The Message shows that he is a very fine man in his administration. I expect he will give us the best administration we have ever had. The Message has the true ring to it.

December 8.

George C. Maynard, Frank Bartlett and *Julia Wilson,* who were acquainted with the Guiteau family, testified to their apparent sanity.

Florence L. Bartlett. Saw the dog thrown down the stairs by the prisoner. Mrs. Scoville reproached him for it.

Guiteau. We have had enough of this dog business. I have just had my attention called to a very impudent discourse by my former wife. It is full of lies and I repudiate her. I do not know anything about the woman and have not for years.

THE COURT. That matter is not before the court now.

The Prisoner. I know it is not, but it is so aggravating a statement that it riles me. If she comes onto this stand I will make it pretty hot for her; I tell her that to her face. I haven't known anything about her for five or six years and I should say she must have fallen from grace very badly. If she comes here I shall show her up. It is such an outrageous, lying discourse that I cannot contain myself. It is a lie from beginning to end. When we lived together and I had her we were in first-class boarding houses and hotels and had plenty of good clothes and that sort of thing.

Howard C. Dunham. Am Secretary of the Peace Society at Boston. In 1879 prisoner had desk room in my office. He said theology did not pay and that he was after money. Had no suspicion he was insane. Last November J. Wilson Guiteau told me there was not a case of insanity in the family.

Guiteau. He is no expert. He thinks it would be a disgrace to

the family. Two of my cousins are in lunatic asylums. Probably I will be there soon.

John Palmer. Was proprietor of a hotel at Saratoga Springs. Guiteau spent a week at my house in July, 1880, and left without paying his bill.

Guiteau. I owe him $10 for a board bill. It costs the government $100 to prove that. Why not ask me and save the money?

Mr. Scoville read the answers of President Arthur to the interrogatories. The President replied that he knew prisoner; that he had seen him possibly twenty times. To the question as to whether he had ever conversed with him: "Never, except to return the ordinary salutations of the day and once or twice in answer to his request to be employed in the campaign as a speaker by the Republican State Committee, of which I was chairman." To the question what political services the prisoner had rendered to the Republican Party during the last Presidential campaign: "None that I know of." To the question whether there was anything in the prisoner's relations to himself or to General Grant or to Senator Conkling or any other leader of the Republican Party, socially or politically, to furnish him with any ground for supposing that he would receive any political preferment: "No." To the question "Did you ever give him any reason to think he could have any political or personal influence with you?" "I never did."

Guiteau. That is a matter of opinion. That is all there is to it.

Rev. R. S. MacArthur. Am pastor of the Calvary Baptist Church of New York. In July, 1872, prisoner introduced himself and his wife to me, presenting a letter of dismission from the church of Chicago. He stated that in Chicago he had had a lucrative practice of law, but owing to the disasters following the fire his practice had entirely gone and he had come to New York to start life afresh. He was gentlemanly and elegantly dressed; his deportment not unprepossessing. I introduced him and his wife to men of prominence in society and in church relations.

The Prisoner. Dr. MacArthur was a very fine gentleman. I owe him ninety-five dollars and I am sorry I cannot pay him now. He is an orator. You can see that from the way he talks.

Dr. MacArthur. His wife came to me later with a letter from her husband stating that he was in great distress for money. He would soon repay me from a large fee. He enclosed a promissory note to me for $100. I gave the money, which he has never repaid. He attended our meetings and participated in the prayers and remarks. There was nothing noticeable either of superior excellence or peculiar unfitness in his remarks. He told me that he expected an office for his political work—Minister to Chile.

The Prisoner. Nothing of that kind; may have mentioned the Swiss Mission; I had some idea that if Horace Greeley were elected he would let me have the Swiss mission. It is only a small affair anyway—only five thousand dollars a year.

Dr. MacArthur. In the Spring of 1875 he was thrown into Jefferson Market jail because of some difficulty with a hotel. From the jail he wrote me that I was the only one to whom he could apply and that he was absolutely helpless. Although besought very piteously by him to intercede, I told him I feared he was a bad man and that he must allow the law to take its course. It came to our knowledge that he had been guilty of gross immorality, and in April, 1875, he was summoned to appear before the Committee on the charge of gross immorality, viz: that he took money which his wife had earned by working in a hotel in the country and spent it in improper relations with other women, and that he had been guilty by frequent acts of violation of his marriage vows. He confessed to me their truth. He was expelled from the church. The Committee were above anything like unfairness towards any person.

Guiteau. The men on that committee said that they had been in the same boat themselves and for that reason they felt sympathetic. They thought that if a man had been unfortunately married he had a right to get out of it.

The District Attorney. We present this testimony because we want to show that what the defense calls insanity is nothing more than devilish depravity. It never occurred to me for a moment that he was other than sane.

Dr. MacArthur. There was no evidence of repentance for the past.

Prisoner. You thought I was totally depraved because I owed yon ninety-five dollars and could not pay you. Pretty good theology, wasn't it, doctor? You are a good fellow. You drew the money out of your salary. I am sorry I can't pay the money, but I gave you my note, payable on demand. Corkhill, if your record was dug up, Colonel, it would stink worse than mine. I understand you are booked for removal. You had better go slow. The President is only waiting to get this thing off his mind before you get your ticket-of-leave.

December 9.

George W. Plummer (Chicago), *Granville P. Hawes* (N. Y.), *Stephen English* (N. Y.), *Warren C. Brown* (N. Y.), *Thomas Darlington* (N. Y.), *Charles H. Welhe* (N. Y.), all of whom had met the prisoner in former years, testified that they had never considered him insane. The last said he had been empoyed to collect money from the prisoner which he owed clients.

The Prisoner. Judge Hawes belongs to the marine court of New York. I was in an office with him a year and a half and I owe him $75 office rent. I want to say here that two or three years ago I lost a great lot of receipts, hotel bills, boarding-house bills and office rent receipts when I was traveling about on theology, showing that I had paid hundreds and hundreds of dollars of debts. I always paid my debts when I got the money. If I didn't get the money I didn't pay. There was no money in theology. Mr. English

was in Ludlow Street jail in 1873 and I got him out and charged him $300. He afterwards pretended there was some trouble about it and had me arrested for that $300. That is about all he knows about me. I worked day and night for two or three weeks to get him out. He went and committed actual perjury and got me arrested there in the court of common pleas of New York and if I had had the disposition I could have sent him to Sing Sing for three or four years for perjury. I thought of doing it at the time. That is the kind of man English is.

Benjamin Harrison.[28] After the inauguration prisoner called to see me and sent several copies of his speech; applied to me for assistance in connection with his application for office. Told him I could not interfere in his behalf. He said as soon as the political dead-lock was broken his name would be sent to the Senate. Saw nothing in his conduct or conversation that raised in my mind any question of his sanity.

Isaac F. Lloyd. As secretary of a life insurance company presented applications for insurance, four from John W. Guiteau, two from prisoner and one from prisoner's father. They contained negative answers to the question whether there was insanity in the family.

Walter R. Gillette (N. Y.). Prisoner came to my office in Fall of 1880, said he was a lawyer; he had some leisure time which he proposed to devote to the soliciting of life insurance. Saw nothing in him to indicate him a man of unsound mind.

Charles H. Raymond (N. Y.). In winter of 1880 he brought in six applications and borrowed thirty dollars from me.

D. McLean Shaw (N. Y.). Prisoner rented an office room from me in 1872. Said he had been practicing law in Chicago where he had lost his library and everything in the fire. That he was a member of the church and had letters of commendation. Did not approve of the way he did business and asked him to get an office elsewhere. He burnished up an oriode watch, saying he was going to fix up somebody with it. He went out and came back shortly afterwards in great glee, saying he had struck a Jew for twenty-five dollars on that watch. He said he went into a pawnbroker's, handed the man his business card, said he was a little short of money and wanted some money on his watch; asked how much, and he said, "Well, twenty-five dollars will do me today." The Jew took the watch and gave him the money. I said, "I think you would be ashamed to do that. He has got your card and will come back on you." "Oh, no," said prisoner, "I took my card back again."

The Prisoner. The fact is the watch was worth fifty dollars, so you are short in your story, Shaw.

[28] HARRISON, BENJAMIN (1833-1901). Born, North Bend, O. A noted lawyer and a general in the Civil War; United States Senator (Ind.) 1881-1887; President of the United States 1888-1893.

Mr. Shaw. He said he was going to get some money from Dr. MacArthur. I told him he ought not to borrow money from his friends unless me was going to pay it back. "Well," said he, "I must have the money anyway."

The Prisoner. I owed Shaw fifty dollars for office rent and he could not see any good in me after that. He is a man who likes money too well.

Mr. Shaw. From the first I knew he was vain and egotistical and had a great desire for publicity. He said that he was bound to be notorious before he died; if he could not get it for good he would get it for evil. I asked him what he meant. He said he would shoot some of our big men, that he would imitate Wilkes Booth. Said I, "And get hanged for it." "Well," said he, "that is an after consideration."

The Prisoner. I say you are a liar, a low, dirty liar. I never had any conversation of that kind with you in my life and you know it. You pretend to be a church member, too.

Mr. Shaw. I am sorry to have to say it. I did not come voluntarily to say it.

The Prisoner. You are a low, stinking liar. I will have no conversation with you. I will publish you all over the world. When you go back to New York your friends will know about it.

Mr. Shaw. This was in my office. I cannot fix the date.

The Prisoner. No, of course you cannot fix the date, you miserable, lying whelp. I never said nor thought so. He is no lawyer; he is a pettifogger.

Mr. Shaw. I never had any doubt of his sanity.

The Prisoner. You are a low, dirty lived puppy to come here and lie about me in that way.

THE DEFENSE AGAIN.

December 12.

Dr. E. C. Spitzka (New York City). Have made a specialty of nervous and mental diseases; received the International prize in 1878 for an essay on insanity. Examined prisoner yesterday at the jail; had never seen him before; found him insane; examined the background of his eye by an opthalmoscope; the pulse with an instrument which magnifies the pulsations called the sysgimograph; found both normal and healthy. His marked feature is a tendency to delusive opinions, and to the creation of morbid and fantastical projects; a marked element of imbecility of judgment, while I had no other evidence than the expression of his face and eyes for this, I have no doubt that he is a moral imbecile, or rather a moral monstrosity. He had an insane manner as well marked as I ever saw it in an asylum.

An acute retentive memory is consistent with some forms of insanity and inconsistent with others. Including in the hypothetical question, I should say he had been of a morbid mental state throughout his life and he was probably insane at the time you mention. A person who has an insane delusion is insane if it is a single delusion. I went to the cell behind other visitors so as to take him unawares,

asked him why he had not removed Mr. Blaine instead of the President; he said, "Because that would not have done any good. There would have been just such another man as Blaine to step into his shoes and Arthur would not have been President." Then he became wildly excited and yelled forth about the way the prosecution was attacking him, bringing up lying witnesses; it was difficult to restrain him. Asked him why he interrupted the Court if God had got the thing in His hands. He made a quotation from Scripture about Jesus Christ sending the lying to utter damnation, and said: "May I not do the same thing? Am I not in the position of Jesus Christ? Am I not a martyr? Have I not sacrificed myself for the American people?" Found his physical condition good, his memory good, and his legal attainments those of a third class shyster. He displayed a certain amount of judgment, p a r r i e d questions which he did not want to answer, and went to subjects which developed something flattering to his self-love.

If you ask me whether he knew the full consequences of his act, I should say without any hesitation that he has always known the ordinary legal consequences of criminal acts, but that is not my interpretation of insanity; it is outside the idea of right and wrong.

I found in him a tendency toward insane delusions and to the formation of morbid projects. He told me as positively and sincerely as a man could, that when he got out of jail (feeling firmly convinced that American people would not allow him to die a disgraceful death after what he had done for them), he would go to Europe for three or four months to keep out of the way, and then come back and lecture, and that he expected to make a great success.

Most murders are not committed from morbid projects, but from sane motives, criminal motives.

Guiteau. With the exception of committing adultery to get rid of my wife and of owing some debts, I have always been a Christian man. I am not afraid to go to the gallows if the Lord Almighty wishes me to go there. I expect an act of God that will blow this Court and the jury out of the window to protect me, if necessary. I want to thunder that in the ears of the American people. There are a good many poodle dogs in the newspaper business, and I want to express my utter contempt for some of those poodle dogs. I am glad to notice that the high-toned conscientious papers are saying almost with one voice that it would be a stain on the American name for the jury to hang a man in my condition on the 2d of July, when I was precipitated upon the President.[29]

Dr. Spitzke. His crippled

[29] A voice from the most crowded corner of the court room exclaimed, "Shoot him now." The prisoner glared around in a frightened manner. The Deputy Marshal endeavored to discover the offender but was unsuccessful.

mental condition is due to a congenital cause and not to natural causes. The shape of his head and his face and certain physical evidences of imperfect brain development which I found, these being a defective innervation of the facial muscles, a symmetry of the face and a pronounced deviation of the tongue to the left. I found that he was born with a brain whose two sides are not equal, or so much unequal as to constitute a diseased brain. The end of his tongue deviated one-half or three-quarters of an inch from the medium line. I do not wish it to be understood that on any of the evidences singly I would call a man insane.

The insanity of two cousins from causes foreign to their ancestry would not prove anything in the prisoner's case, but Abby Maynard, who had been a bright child until subjected to mesmeric influences, threw the strongest light on the congenital insanity of the prisoner. It is a common symptom of the insane, that they consider themselves the instruments of a higher power and according to their degree of education they would make it more or less plausible.

To the District Attorney. I wrote a paper in the New York Medical Record in which I said there was not a scintilla of doubt that Guiteau was insane and that he would be admitted into any asylum as a proper subject, and that a certain writer on insanity would turn over in his grave if Guiteau was hanged.

The District Attorney. Is that true?

Dr. Spitzke. That is an absurd question. You know that was intended figuratively. I am not here to give you instructions on the use of metaphors.

Guiteau. The doctor gives you trouble, Corkhill. I am sorry to see you heated up so. You had better cool off and let us go home.

Dr. Spitzke. I said in this article that Mr. Blaine, Senator Logan and the President recognized the insanity of the prisoner. It was so stated in the papers of the day. I know that there was a telegram from the Cabinet to the American Ministers in Europe stating that there was no conspiracy but the assassination was the act of an insane man.

The Prisoner. That settles you, Colonel.

Dr. Spitzke. I said that the conviction of Guiteau would be nothing more than a form of lynch process which would reflect great discredit on American medical jurisprudence.

The District Attorney. When you came into this case you had not only expressed your opinion as to the sanity or insanity of the prisoner, but you had criticized the law officer in charge of the case and said that it would be disgraceful to hang the prisoner and that the case ought never to go to a jury. You pretend to say that you came here as unbiased witness?

Witness. I mean to say that I am an honest, scientific, unprejudiced witness.

The Prisoner. Let us go home, Colonel; it is three o'clock. You are in bad repute, Corkhill, with every member of this bar, and I tell President Arthur publicly that he ought to remove you at once. You are an unmitigated nuisance in this

case. If President Arthur has any respect for his administration, he cannot do a better thing than to give this man Corkhill the go at once.

THE COURT. You have said that once already.

The Prisoner. I want the President to act upon it, too. Corkhill is an unmitigated nuisance and has been from the start. He lied to me all the summer. He has shown himself to be a man of low tastes and of no conscience. The administration ought to kick him out at once.

December 13.

Cross-examination of Dr. E. C. Spitzke.

The District Attorney. Do you believe in God? If the Court does not declare the question is irrelevant I will answer.

THE COURT. You are not obliged to answer that question.

The Prisoner. Do you believe in a God, Corkhill? I have been digging up your record and it stinks worse than a mackerel.

Dr. Spitzke. I decline to answer on principle. It is to my point of view an impertinent question in a country that guarantees civil and religious liberty. I would say the family was strongly drenched with hereditary taint and that the prisoner might or might not have inherited the taint. But the belief held by Luther W. Guiteau that a sick man might be cured by prayer is not a sign of insanity, though it may be a sign of weakness of judgment. The belief of Mr. Abram Guiteau that he would never die would be a strong evidence of insanity.

Dr. Fordyce Barker.[30] Have carefully investigated and studied the subject of insanity. It is a disease characterized by an alteration of the mental faculties and a perversion of the normal actions of the individual. There can be no hereditary insanity; there is undoubtedly a hereditary tendency to insanity. Sub-insanity in a remote generation does not prove an especial liability to inherit the disease. "Moral insanity," is not found in medical science but is a term loosely used to excuse or palliate conduct otherwise undefinable. The habit of falsely boasting of intimacy with important personages does not indicate disease, but merely vice and vanity. An inconsistent claim of belief in Divine inspiration is not evidence of insane delusion. That a person controlled himself and voluntarily refrained from the act on which he professes to have a command from God, would show he had not lost his power of will or self control.

Eccentricities in language, dress, modes of expression or conduct, different from the ordinary standard of the world, are usually the result of vanity or self-love. There can be no insanity unless the action of the brain is disturbed.

Cross-examined. I do not think there is any such thing as moral insanity. I have no faith in its existence whatever; moral insanity is simply wickedness. Uncontrollable impulse may ex-

[30] BARKER, FORDYCE (1819-1891). Born, Wilton, Me. Noted physician and medical writer. Died in New York City.

ist in a perfectly sane person, as the result of bad habits or passions. If a man who is in the habit of using tobacco or opium is not able to break off, that habit is an uncontrollable impulse. But that is not insanity—it is a vice. Insane people may be very wicked and are responsible for such wickedness as they can restrain themselves from doing: if they can find a motive for doing or not doing an act of wickedness, it shows that their insanity has not destroyed their power of will.

Henry Wood. Met prisoner several times in connection with his divorce proceedings. He attempted to deliver a lecture in Philadelphia on the "Second Coming of Christ." He spoke for about fifteen minutes and then stopped, saying that his book would soon be out, and that everybody could then see what he thought on the subject; he then passed around his hat for a collection.

Saw nothing to indicate unsoundness of mind; he appeared as a man of more than ordinary intelligence, but wholly wanting in principle.

Simon D. Phelps. Am a broker; had conversations with him about his newspaper scheme. Thought him of Colonel Sellers type—one who is going to make great fortunes for himself and friends—a genial, good-natured fellow, differing, however, from this man, who, instead of being genial and good-natured, has the most unbounded selfish disposition that I have ever met.

The Prisoner. That is the best you can do; is it? That indicates your brain.

The witness further stated on cross-examination that he had expressed the opinion that he ought to be hanged.

December 14.

Rev. John L. Withrow (Boston). In 1878 prisoner had commended himself to me as being a co-worker with Moody. Asked if he could lecture in my church—a reply to Ingersoll. At the weekly prayer meetings he was constantly taking part. He was always to me an ill-natured man. Lost sight of him until the winter of 1879-80 when I met him and was told he had opened a law office. Never saw anything to indicate that he was a man of unsound mind. Should have taken him to be a very shrewd man. I should say a very cute man instead of shrewd. The difference is that one is sharper than the other.

The District Attorney. And shorter.

The Prisoner. He did not say that. You put that in Corkhill. You must have slept well last night. While in Boston I attended Dr. Withrop's church and the Christian Association regularly, and associated with high-toned Christian people. I say this for Corkhill's benefit, on the ground of total depravity. I always have associated with high-toned people. I don't know any dead beats or disreputable characters of either sex. The object of this kind of examination is to settle this question—whether I knew I was doing wrong. My answer is, that I don't care whether I knew I was doing wrong or not. My free agency was destroyed and I hadn't any choice; and I will take my chance with this Court

and this jury and the Lord on that point.

Charles A. Bryan (N. Y.). First saw prisoner in February, 1881; he inquired what commission would be allowed for obtaining applications for insurance; asked for advance, which he did not get; gave me his speech, "Garfield against Hancock," and spoke of his familiarity with "Jim" Blaine and other leading men of the Republican Party. I advanced him five dollars; said he was a prominent applicant for the position of Consul to Paris, and that he would soon go to Washington to obtain his appointment; came again on 5th of March, and pleaded very hard for another advance. Had never seen anything indicative of unsoundness of mind but thought him a pretty shrewd sort of fellow. If I have expressed an opinion about him it was that he ought to be hung; that is my opinion now.

Henry M. Collyer (sworn).

Guiteau. Oh, I remember you as the man that put up that *Herald* job on me. This is the man who represented Reese Bros. & Co. of Chicago at the time I was tried before Judge Donohue, who said I had a right to retain the money.

Mr. Collyer. I had a suit against Guiteau who had collected money and not paid it over; told him he was a thief and a scoundrel.

The Prisoner. You never said that, or I would have knocked you down at the time, though I wouldn't do it now. I am not in that business.

The Court adjourned now on account of the illness of Juror Gates.

December 15.

The Prisoner. If your Honor please, I want to make a little speech. It is very important that the health of this jury should be cared for and we don't want this thing to slip. It is a very fine jury in every way—good, honest, intelligent men. I suggest to the Marshal that they be allowed to take a walk of four or five miles every day. Some of them are not used to good food, I understand, and it disagrees with their digestion.

THE COURT. The Marshal will look after that.

Henry M. Collyer.

Mr. Scoville. Henry M. Collyer, have you ever expressed an opinion as to the prisoner's guilt?

Guiteau. You are about as stupid as you can be, Scoville. You haven't got sense enough to know better than to quiz a man of his character.

Mr. Collyer. I might have expressed an opinion but do not think I ever said prisoner ought to be hung. At the time I knew prisoner (1873) he was perfectly competent to judge between right and wrong.

T. M. Justice. Met prisoner in Logansport in 1878; he was selling a life of Moody. I thought him sane then.

Guiteau. Produce the book or else you stand convicted before the American people as a liar. You infernal whelp, you, to come here and pass me off as a book agent. I was preaching the Gospel—selling my own productions. I never went into the book business in my life.

Rev. Rush R. Shippen. Met Guiteau at Mrs. Grant's boarding house. He was a little pe-

culiar but there was nothing indicating insanity.

Dr. Noble Young. Am attending physician at the jail; saw prisoner the day he was brought there. He said he was inspired to do the act, and that if the President should die, he would be confirmed in his belief of inspiration. Asked him once why he should lay the blame of the death upon the doctors. Said things must take their natural course. He is a perfectly sane man, as bright and intelligent a man as you will see on a summer's day. Never saw anything about him that indicated insanity.

Guiteau. You are examining witnesses for the other side, ain't you, Scoville? One would think so from the way you are going at this business. You are about as stupid a man this morning as I know of. I said if the President recovered it would show that the Lord had countermanded His order, just as He did in the case of Abraham. He commanded him to kill his son, and then countermanded the order. The Lord has taken care of it, too, gentlemen. I am entirely satisfied with the way the Deity has taken care of this case so far. They think I am a great man at the jail.

Mrs. Scoville. If the Court please, I would like to ask a question which I consider of vital importance.

THE COURT. Yes.

The Prisoner. It is as much as they can do to stand me without any help from you.

Mr. Scoville. I prefer that it should not be done.

Mrs. Scoville. I consider that it is of vital importance, that is all I have to say.

THE COURT. Suggest it to Mr. Scoville and let him ask it.[31]

The Prisoner. It's as much as they can do to stand me without any talk from you. You did it the other day, and I hope you won't do it again. You are no lawyer, but I agree with you on some points.

Gen. Joseph S. Reynolds (Chicago). Guiteau came to my office in Chicago in 1868, and applied for admission as a law student. He would have made a successful lawyer if he had stuck to it industriously. Saw him in jail here on July 14th. After leaving the jail made memoranda of the conversation. He said that he expected Conkling and others to befriend him when there was a reaction in the public feeling; that Mr. Corkhill had promised to put off the trial until the feeling had changed in favor of the prisoner.

Guiteau. That's what Corkhill said, but he lied about it. I always spoke of it as a removal. I have found him out now. He's a first-class fraud.

Gen. Reynolds. He made no reference to inspiration; the subject of the cause or motive of the act was not alluded to.

Guiteau. I want to ask the General if he was in the employ

[31] Mrs. Scoville unexpectedly took part in the examination and elicited an admission that a person with a malconstructed brain may be more liable than others to insanity.

of Mr. Corkhill at the time. He pretended to be my friend. If he came in the guise of a detective I want that fact shown up before the American people.

Gen. Reynolds. He said there was no malice in the crime, that his act was a patriotic one. On 18th I told him that the President would recover, and he seemed much disappointed; showed him papers giving the sentiments uttered by prominent Stalwart leaders regarding the crime, and he seemed stupefied; he said he thought these men would defend him; he was astounded that they should look at this act merely as a bloody assassination, as they had been denouncing General Garfield and making him out a monster.

Guiteau. I want to say that General Reynolds was the first man to open my eyes about Corkhill. Why, he says he's just as bitter as gall on you. The whole thing was a gigantic lie from beginning to end. If you expect to succeed by lying, Corkhill, you will find out you can't do it. God Almighty will strike you dead just as He did Ananias and Sapphira.

The witness said that at the interview on the 18th, prisoner wrote his address "To the American People."

This paper was read to the jury by *Mr. Porter* as follows:

To the American People.

I have just discovered that all the papers setting forth my motives in attempting the President's removal have been suppressed. I was almost stupefied when I discovered the fact. I have not been permitted to see a single paper since I came here. I have been most outrageously deceived. I am just informed that not a newspaper in America, and that not a man, woman or child has spoken in my defense. I claim that the reason the people feel as they do is because I have had no defense. I now wish to state distinctly why I attempted to remove the President. I had read the newspapers for and against the administration very carefully for two months before I conceived the idea of removing him. Gradually, as the result of reading the newspapers, the idea settled on me that if the President was removed, it would unite the two factions of the Republican Party, and thereby save the Government from going into the hands of the ex-rebels and their northern allies. These papers were the mouthpiece of the Stalwarts, the Administration and the Democratic Party. I had none but the best of feelings for the President personally. I had no malice and no murderous intent. I acted solely for the good of the American people. I appreciate all the religious sentiment and horror connected with the attempted removal of the President. No one can surpass me in this; but I put away all sentiment and did my duty to God and the American people. I claim to be a gentleman and a Christian, and do not dissipate in any way. I claim my attempt to remove the President was a patriotic act, and demand a full hearing. Not a soul in the universe knew of my purpose to remove the President. It was my own conception and execution, and whether right or wrong I take the entire responsibility of it.

The Prisoner. There is quite a large demand for my autographs. I suppose I have given a thousand of my autographs in the last two weeks. It has been suggested that I charge twenty-five cents apiece for my autographs, but I won't do it, as there is no money in this busines for me and I don't want there should be any in it. I notice on account of the weather last night that Mr. Scoville's lecture was not very successful. I am going to make a speech. I want to say, also that there are certain office holders in this city who are benefited by my inspiration. They now hold nice, fat offices, and they would never have gotten them had it not been for me. I ask them as men of conscience to respond. We want money. If they don't take the hint I am going to call their names. The rich men of New York gave Mrs. Garfield and her family two hundred thousand dollars or three hundred thousand dollars. It was a splendid thing—a noble thing. I want them now to do something for me. I don't want anything for the defense, but Mr. Scoville and his family are poor. These fellows who have been benefited by the inspiration and are ashamed to give their names can send it on the sly and we won't give their names.

General Reynolds. He wrote the statement while I was present and very rapidly; requested that it should be published. He seemed dispirited and dejected.

Guiteau. The mills of the gods grind slow but they grind sure. They will grind you down to atoms, Corkhill.

The *District Attorney* read the record under seal of a decree of divorce in 1874 granted to Anna Guiteau, from Charles J. Guiteau on the ground of adultery.

The Prisoner. I think it is a great deal more moral and religious to have obtained a divorce after I had married a woman I had no business to have married than to live along with her year after year and have children by her. So it was a matter of conscience that I committed adultery to get rid of her. I have been strictly virtuous for the past six or seven years, though, and am a Christian.

General J. S. Reynolds (cross-examined). The address to the American people I said I would keep. My reason for visiting the jail was to ascertain whether there was any socialistic plot in the assassination; was satisfied the prisoner had no associate.

The *District Attorney* read newspaper extracts which last witness had brought to the jail and read to prisoner. They comprised telegraphic dispatches from Senator Conkling expressing abhorrence of the prisoner's act; also reports of interviews with General Frederick Grant, Senator Logan and others; also editorials on the assassination.

Guiteau. That is false; General Grant was always very kind and polite to me. He liked the ring of my speech. That is what Fred. Grant says. He is a nice youth, is he not? He is too lazy to get a decent living. He is a dead beat, not I. I used to be a member of Beecher's church. He was supposed to be a virtuous man then,

and perhaps he is now. I used to go up to Logan, pat him on the back, and say, How are you, General? and he would say, How are you, Guiteau? He thought I was a good fellow. Then they all turned against me, just as Peter did when he denied the Saviour, when he was on the cross and in trouble. But they have got over it now and they are coming up like proper men. My life would have been snuffed out at the depot that morning if God Almighty had not protected me. I was thinking about it this morning when I awoke, and it seemed to me that that act was the most audacious thing a man could do—to shoot down the President, surrounded by Cabinet officers and the police. I would not do it again for one million dollars. But I was in such a desperate state of mind under the pressure upon me that I could not have resisted it if I were to be shot down the next moment. My free agency was destroyed.

Mrs. Ella C. Grant. Prisoner boarded at my house forty-one days, leaving two days before the murder of the President.

Guiteau. The doctors did that, I simply shot at him.

Mrs. Grant. Never noticed anything in him indicating unsoundness of mind; considered him as intelligent as anyone in my house.

Mrs. Anna Dunmire (sworn).

The Prisoner. This lady is married and has children, and it is an outrage for Corkhill to be permitted to call her and dig up her reputation, which I will have to do if she attempts to do me any harm. I ask the Court to stop this man Corkhill. He is an old hog. He has no conscience or character or sense, and he is using his official position to traduce this lady. If I was President of the United States I would kick that man out of office in two hours. I want to make a speech to President Arthur. There are scores of first-class lawyers in New York City whom he knows, high-toned, Christian, conscientious men, any one of whom would be a hundred thousand times better than Corkhill. I ask President Arthur as a personal favor, and in the name of the Republican Party, to kick this man out of office at once. I made General Arthur President, and I have a right to make this personal request of him. If he is the man I take him for he will act upon it.

Mrs. Dunmire. Was married to prisoner on 3d July, 1869, in Chicago, and Mr. and Mrs. Scoville were present at the marriage. We lived together in Chicago until the fall of 1871, he being engaged in law business; then went to New York and lived probably at fifteen or twenty places. In New York he followed politics; was engaged in the Greeley campaign and expected as a reward for his services to be appointed as Minister to Chili.

Guiteau. All the question here is, whether my free agency was or was not destroyed at the time I fired the shot. All this collateral evidence about my circumstances and about what I did or said or did not do or say

during the last forty years has no bearing whatever on the point; and with all due respect to the Court, I do not think that the Court in banc would admit it.

Mrs. Dunmire. In my association with prisoner I never noticed any insanity.

The *District Attorney.* You may take the witness.

Guiteau. Thank you, Mr. Corkhill, that is the decentest thing you have done on this trial. I suppose Mr. Porter or Mr. Davidge insisted on it. They are supposed to be decent men. Cut your cross-examination short, Scoville. You are about as consummate a jackass, I must say, as I ever saw. You haven't got the first conception of this case yet. I would rather have some ten-year-old boy try this case than you. You ask questions that have no possible relevancy in this issue. You have got no brains and have got no conception and can't see a foot ahead of you. Get off the case and I will do the business myself. That is my opinion of you. I could have got three or four first-class lawyers on this case that were anxious to come if you hadn't elbowed them off with your consummate egotism and vanity. You are taking altogether too much responsibility on this case. I have got to do the heavy work myself, outside of the Court and jury.

You don't know what you are doing. Go home and go to bed. You made a perfect fool of yourself trying to lecture. You lecture! ha, ha! I know nothing against this lady's Christian character, except that I know her to be a high-toned Christian lady. I know her well and have much respect for her.

Dr. Francis D. Loring (Washington). Had made a specialty of diseases of the eye and ear for the purpose of determining whether or not the appearance of the eye gives indication of disease of the brain; examined prisoner's eyes at the jail and found nothing indicating an affection of the brain.

Dr. Allan McLane Hamilton[32] (New York). Made three personal examinations of the prisoner; found no apparent physical deformity, nor anything whatever indicating any congenital defect. There was an appearance of flatness on the top

[32] HAMILTON, ALLAN MCLANE (1848-1919). Born, Brooklyn, N. Y. Studied medicine. His father, Philip, was the youngest son of Alexander Hamilton (see 1 Am. St. Tr., p. 6) and his mother was the daughter of Louis McLane of Delaware, Minister to London. United States Senator and Secretary of State. He studied medicine with Dr. Harvey B. Sands and graduated from the College of Physicians and Surgeons, 1870. He became a great authority on mental diseases; was a member of the leading medical societies of this country and a fellow of the Royal Society of Edinburgh 1878. Author of "Medical Jurisprudence" (1883), "Intimate Life of Alexander Hamilton" and "Recollections of an Alienist," ante p. 7. Professor of Mental Diseases, Cornell Univ., 1900-1903. During the war he established a base hospital in Scotland for the British Government. He died at Great Barrington, Mass.

of the head, but that was owing to the cutting of the hair. There was no irregularity of contour; it was fair sized. Did not find any external evidence of mental or physical disease; as to traits of character found he was eccentric and probably ill-tempered; believed him to be sane, to be able to distinguish between right and wrong and to know the consequences of his acts.

The Prisoner. With all respect to the Court and jury, and to the witness, I do not think that this kind of testimony amounts to a snap. How are you going to tell whether my free agency was or was not destroyed; I swear that my free agency was destroyed by the Deity, and how is the prosecution going to prove that it was not? That is all the point that the Court and jury have to pass upon.

Dr. Hamilton. Cross-examined. Prisoner's scheme in regard to the *Inter-Ocean* newspaper did not prove a defect of the prisoner's reasoning power. It proved bad judgment, but there are many men in the world who are schemers and visionaries and who have inspiration.

December 21.[33]

Dr. Hamilton. Cross-examined. The cases in which the word "inspiration" is used by insane people are when the individual imagined himself to be the Savior or somebody else; had a patient three or four months ago who imagined that she was the bride of the Savior; another who thought he was the Savior. It is a common thing to find insane people believing themselves members of the Trinity and believing themselves inspired. There are a number of people who say that they are inspired, that they are pleasing God in building churches or doing certain other things. In Utah people believe themselves inspired to take three or four wives.

The will does not control physical impulse. If a man has sufficient nervous disease to destroy intellectual pressure and prevent his exercising control of his will he is insane.

The Prisoner. The will is controlled by spirits—not by intellectual process. Clark Mills took a bust of my face. He thought that someone hereafter would be interested in it. He thought I was a great man. He was the man that did Jackson, opposite the White House. He thinks I am a greater man than Jackson, though Jackson has been President and I haven't been President yet. Mills wanted to immortalize his name by getting it on my bust, so I took off my beard for his benefit. He is a great deal better man for you than this one. He said that one side of my head was badly deficient.

Dr. Hamilton. Insanity manifests itself in various ways in the same patient. Experienced people are sometimes deceived and patients are frequently discharged as cured when they are not so. I do not agree with the theory of moral insanity. If insane persons know the na-

[33] There was no session on December 19 and 20 on account of the death of the wife of Juror Hobbs.

ture and consequences of their acts they should be punished like other people. There are a great many eccentric people who never become insane.

To *Mr. Davidge.* Sanity and insanity are divided by a very vague line; one may become gradually shaded into the other; many people may be medically insane and yet know perfectly well the difference between right and wrong and know when they are doing wrong.

Dr. Worcester (Boston) recalled. Examined the prisoner at the jail and have been in daily attendance at the Court room for several weeks past; carefully watched prisoner's conduct; think he is sane.

The District Attorney put to witness a long hypothetical question, embracing the history of the prisoner's life and the facts that have appeared in the case, and asked whether assuming these propositions to be true, the prisoner was sane or insane on the 2d of July last? "In my opinion he was sane."

The District Attorney read an additional hypothetical question, reciting many of the discreditable incidents in the prisoner's life.

To *Mr. Scoville.* My motive in writing a letter to you inquiring whether I could be of any service to the prisoner was because at the time I believed the prisoner to be insane. I changed my opinion after my interview with him in the jail, supported by the evidence which I heard. I formed my first opinion from statements which I had seen that he was actuated at the time he shot the President by an insane delusion, and that he was under the influence of an irresistible pressure which was the outgrowth of that insane delusion.

Guiteau. You are stupid, Scoville, as the witness is. You are just compromising my case every time on cross-examination. You are no more fit to manage this case than a ten-year-old school boy. You have no ability in examining witnesses. Your business is in examining titles. You had no business to come here at all and compromise me with your blunderbuss way.

To *Mr. Davidge.* My first impressions had been formed on newspaper reports and conversations, but that opinion has been changed by examination and observation. Communicated that change to Mr. Scoville to a certain extent personally, and to the full extent to Mr. Reed, prior to today.

The Prisoner. Scoville, you should have let the man go two hours ago. If I were indicted for manslaughter and Scoville defended me I would be hanged for murder. If you had let this man go two hours ago it would have been better for the defense. I tell him to get out of

the case. He is ruining my case. He is not fit to try it.

Mr. Scoville. No one realizes that more than myself.

The Prisoner. Then get out of the case, you consummate idiot. You have got no more brains for this kind of work than a fool. You compromise my case in every move you take. If you had let that man go at one o'clock he would have done me no harm.

Mr. Scoville. If the Court please, I have no more questions to ask the witness.

The Prisoner. You had better get off the case. I expect that the Almighty, notwithstanding Scoville's asinine character, will see that I am protected. I expect that it will take a special act of God to do it. You had better send in your bill to Corkhill, Scoville, and go home. You seem to be working for the Government on this case. I won't have you stay and compromise my case, you may be sure of that. You had better get ready and go home to Chicago at once. It is an outrage on justice for this man to come here totally inexperienced in criminal matters and compromise this case. I request him publicly to get off the case. I would rather take my chances with Charley Reed, who is a first-class cross-examiner, and John B. Townsend and Magruger at this late day than to have this idiot go along compromising my case. He has got no wit and no sense and between him and Corkhill I have a pretty hard time.

Dec. 22.

Dr. Theodore Dimon. Had been Superintendent of the asylum for insane criminals at Auburn, N. Y. Made a personal examination of the prisoner; noticed him in Court and heard his testimony; considered him sane.

The District Attorney propounded the hypothetical question.

Dr. Dimon. It is my opinion that he was sane.

Cross-examined. He did not attempt to conceal anything; appeared open, frank and sincere in his statements; had no reason to suppose that he was feigning. In the Court room think he has been acting a part natural to his circumstances and character. Egotism is one of the manifestations of insanity. The excessive idea of importance of everything that concerns themselves and an absence of ideas of whatever injurious effect their conduct might have on others. Prisoner's attempt to lecture and his habit of leaving the stage in a great hurry might be an indication of his unsoundness of mind, or might be an indication of intoxication. Though the facts tended to show the prisoner was sane, many of them taken individually were not inconsistent with the existence of an unsound mind; many insane persons have good memories and are capable of laying and following plans of action; I do not believe in personal divine inspiration in this age of the world.

The Prisoner. Well, doctor, if the Lord could inspire a man two thousand years ago why can't He do it today? Is there anything in human nature different now from what it was

then? What is your idea on that?

Dr. Dimon. If the Lord did inspire anybody two thousand years ago He can now if He choose.

The Prisoner. That is my idea on that. He not only can, but He did in this particular case.

Dr. Dimon. In England 50 per cent of the insanity was heredity, in my asylum only four or five per cent was.

The Prisoner. These experts, allow me to say, are high-toned. High-toned, respectable men, but with all respect I say that they hang as many men as the doctors kill. There is no question about General Garfield being alive to-day, whatever my motive had been, if the doctors had not killed him, but the Lord allowed the doctors to finish the work I began, because He wanted him to go; and he did not go before his time any way. We have all got to go. It is a question of time.

D. McLean Shaw (recalled)

Guiteau. This is the man who told the lie about Booth. We have your record, Shaw, over there in New Jersey, where you were indicted for perjury. You only got off on a technical quibble.

Mr. Shaw. Was indicted for perjury in reference to the payment of a note for $1000. Tried and acquitted on that charge, on my own desire to clear up the case.

Guiteau. Shaw's statement about Booth is the most extraordinary statement that ever came from a human mouth. There is not one word of truth in it, and you know it, too. God Almighty will curse you for it. I never talked to you about Booth in my life; you are marked for life; it is the most extraordinary lie that ever was concocted. I never mentioned the subject of Booth to Shaw; it is not likely I would wait ten years to kill some great man. It is the most outrageous thing ever concocted by a human being; it is a lie on its face and any intelligent man would say so.

December 23.

Guiteau. It is said that I have been abusing Mr. Scoville. I want to make a speech about that. Mr. Scoville is doing very well in this case considering his theory, but he is not a criminal lawyer. He is a good fellow and a first-class examiner of titles, but I cannot have Mr. Scoville here compromising my case. There is no lawyer in this Court room but knows that he has asked questions for the defense which have been a positive injury. I cannot sit here when my life is at stake and have him compromise my case in this way. My friend, Charles H. Reed, who was for twelve years District Attorney at Chicago and a first-class lawyer, has very kindly consented to assume the charge of this case, and I introduce him to your Honor, the jury and the American people. He is a good fellow. Scoville is a good fellow, too, and I want him to continue in this case and help in every way. I have not talked on this case and will not talk on it any more than is absolutely necessary for

truth and justice. I am not going to sit here and allow witnesses to tell that which is absolutely false even if I have to interrupt the Court and jury and to seem indecorous. I claim to be a gentleman and I want this trial to be conducted in a proper spirit. But I have been greatly excited on account of certain witnesses and on account of Mr. Scoville's inexperience. I expected to have three or four first-class lawyers here—Mr. John D. Townsend, of New York, Judge Magruder, of Maryland, and others who know all about this criminal business. But they have not come and my opinion is that Mr. Scoville elbowed them off.

Mr. Scoville said he had endeavored to obtain such assistance in the case as would be appropriate. Mr. Reed would therefore appear openly in the case if the Court did not consider it inconsistent with the fact that he had been a witness.

Mr. Porter stated the prosecution would raise no objection to Mr. Reed appearing as counsel.

William A. Edwards (Brooklyn). I substantiate the statement of Mr. Shaw, in whose office I was a clerk, that Guiteau said he would some day kill the President. It made little impression upon me as I then thought he was the last man in the world to do an act involving personal danger.

Dr. Spencer H. Talbot. Am Medical Superintendent of the Homeopathic Asylum for the Insane at Middletown, N. Y. Have closely observed prisoner and listened to his testimony. Believe he is sane and was so on the 2d July.

The Prisoner. How much do you get for this opinion?

THE COURT. Keep silence.

The Prisoner. All right, your Honor, I'll be quiet now.

Mr. Davidge. Your Honor will note that the free agency quoted by the prisoner operates all right now as he can keep quiet when he wants to.

The Prisoner. I do not pretend to say that I am insane now any more than you are, but on the 2d July and for thirty days prior I was insane. That's the issue.

Mr. Davidge. Then if you are sane now you can behave yourself.

The Prisoner. I come here as my own counsel, and I have just as good a right to talk as you have. You are altogether too talky this morning. You are worse than a boar with the diarrhoea. You had better go home.

Cross-examination.

Dr. Talbot. Inspiration is merely insane delusion and there is no evidence that he labored under an insane delusion. He thought in Court prisoner was exaggerating his tendencies to egotism, vanity and ingratitude. Did not consider these tendencies peculiar either to the sane or insane. They may be seen in either case.

Guiteau. There is no use wasting time with such a fellow as he is. You are making too much out of him. Give him a kick and let him go. That is the way to treat a man of his character. He ain't anything; he was nothing but a little sub

there in Shaw's office about ten years ago, and used to serve papers. He is not a lawyer and has not got brains enough after ten years' effort to be admitted. Let him go. He ain't no good.

Dr. Henry P. Stearns. Am Superintendent of the Hartford Retreat for the Insane. Made examinations of prisoner at the jail. On the hypothetical question I think he was sane on July 2d.

Guiteau. You came to me, doctor, as a friend, and I, supposing you were going to testify for the defense, talked very freely with you about my religious feelings and all about myself, but Corkhill's money was too much for you. I want to say here that I don't pretend that I am any more insane at this minute than Davidge. I won't say Corkhill, for I think he is cracked. I was insane on July 2d. I claim I don't care what these experts say about my sanity now, that's got nothing to do with it.

Dr. Stearns to Mr. Scoville. I do not think he honestly believed he was inspired to kill the President.

Cross-examined. I admit there are in the Guiteau family more than the ordinary proportion of cases of insanity.

The Prisoner. When you get in the domain of spiritology, you are in the dark, doctor. You can't tell what kind of a spirit will take possession of a man's mind and impel him to an act. I don't care about your head or antecedents. The whole thing rests on the spirit that gets into you. A man may be perfectly insane at the time of the commission of an act and an hour after be sane. I wouldn't go to the depot again and shoot at President Garfield for a million dollars from the mind I have on me now and an hour after the act was committed, and yet for thirty days prior I would have shot him at any time I could. If I knew I was to be shot dead the next minute I could not have resisted it. That is all there's to it. I have said it about fifty times.

THE COURT. Then don't say it again.

The Prisoner. I say it because the whole theory of the prosecution is ridiculous.

Dr. Stearns. In almost all forms of insanity, memory is the first faculty to show impairment.

December 24.

The Prisoner. Allow me to ask you if you hold that a man cannot be insane in a specific act without his brain is diseased? Is that your theory?

Mr. Porter. One moment.

The Prisoner. Keep quiet, Mr. Porter. I am here as my own counsel.

Mr. Davidge (to Mr. Scoville). Do you adopt that question?

Mr. Scoville. Yes.

THE COURT (to the witness). You may answer.

The Witness (answering). The very term insanity implies a disease of the brain.

The Prisoner. Then a man cannot be insane without his brain is diseased in your notion?

Mr. Porter. No colloquy with the criminal.

The Prisoner. I am no criminal. Who's doing this, you or the Court?

Mr. Porter. He is the criminal, your Honor.

The Prisoner. I am no more a criminal than you are.

Mr. Porter. He swears that he is a criminal.

The Prisoner. I am no more a criminal than you are. I stand a great deal better outside than you do. The papers say I am a bigger man than old Porter.

Mr. Davidge. I believe your Honor has ruled that the questions of the criminal must pass through his counsel.

Mr. Porter. I shall be compelled, if these interruptions are continued, to have them made from the dock.

The Prisoner. From the dock, eh? Try that on.

THE COURT. That is a question that has suggested itself to me.

The Prisoner. I am here as my own counsel under the law of every State in the Union.

THE COURT. Keep silent and let the examination proceed.

The *District Attorney.* I think, your Honor, that is a very proper suggestion from Judge Porter and it is one which we shall insist upon if these interruptions are continued.

Dr. James Strong. Am Superintendent of the Insane Asylum at Cleveland; examined prisoner in the jail, found his bodily condition good; insanity is usually associated with bodily health.

The Prisoner. And now I will help you by saying that I am in excellent health and spirits and that I am not insane.

Mr. Porter. I must insist that these interruptions be stopped.

The Prisoner. If you can tell me whether my free agency was destroyed that will help the matter. This great lot of rubbish has no possible bearing and I think it is an outrage to waste time so.

Dr. Strong. His organs of perception were keen. He seemed to perceive quickly and thoroughly. His——

The Prisoner. In other words, that I was no fool. The Lord never employs a fool to do His work. He gets the best brains He can find every time, and He takes care of the man and that is what He is going to do with me.

Mr. Porter. I notice that these interruptions are very annoying to the jury and to your Honor, and the prisoner's silence must be enforced, or when he speaks he must speak as an accused and indicted party from the dock. In the next instance in which these interruptions occur I shall ask that he be assigned to the place to which the law assigns him.

The Prisoner. You are very much excited.

Dr. Strong. Prisoner thought quickly and consecutively which struck me he had a marked control of his mind, because a man cannot fix his attention on a given subject without exercising his will power. I am convinced prisoner's mental organization is thoroughly intact, and that all his mental processes work harmoniously. He is sound in his perceptions, his sensations, his thoughts, his will. Such a condition I look upon as entirely incompatible with insanity.

Dr. Abram M. Shew, Superintendent of the Middletown Hospital for the Insane, and *Dr. Orpheus Evarts,* of College Hill, Ohio, medical superintendent of the Sanitarium, sustained the sanity of the prisoner, not only now, but on 2d July. The latter said in his opinion the prisoner had been exaggerating his own peculiarities, which were egotism, sharpness, smartness, vulgarity and ingratitude.

The Prisoner. Tomorrow is Christmas. I wish the Court, the jury and the American people and everybody else a happy Christmas. I am happy.

December 27.

Guiteau. I had a nice Christmas. I hope everybody else did. I had a nice Christmas dinner, fruits, flowers, candies, etc., and plenty of lady visitors and gentlemen.

Dr. A. E. McDonald. Am Superintendent of the Ward's Island, N. Y., Insane Asylum. Have treated some 6,000 cases of insanity. Inspiration always overrides all fear of bodily pain or injury, and renders the person who believes he is acting under inspiration wholly oblivious to such considerations. Their acts are sudden in both conception and execution as a rule, and they seldom attempt to avoid the consequences in any way. Do not believe in temporary insanity, in which the act committed is the only evidence of insanity and where the person is to all appearances perfectly sane in other respects both before and after the act. Have never seen an instance of it. Visited prisoner in his cell and made the usual mental examination. He always spoke of the act as my "conception" and "soon after I conceived the removal of the President." Asked him why, if the act was the Almighty's and he was simply the agent, he was so particular as to practice his aim, and why he did not trust the details to the Almighty? He hesitated, flushed a little, and said: "The Almighty often trusts the details to his agents." Asked him what plans he had for the future; he said, while he did not consider himself insane, he had studied up the question of insanity and believed he would be found by a jury to be legally insane at the time of the commission of the act, and would be acquitted. Asked, "What do you suppose will be done with you?" he replied, "I will be sent to an insane asylum, and I find, under the law, I can after a few months, have a commission of lunacy to pass upon my case,

and of course they will find me sane and I will be discharged." Believe from my examination and observations he is a perfectly sane man. I have noticed his most violent interruptions are made when the weight of evidence is against him.

Cross-examination. Insane persons are more liable to be adjudged sane than the reverse. Overwork, care and anxiety might produce dyspepsia, which with other causes might lead to disease of the brain, and that in its turn would stimulate insanity.

December 28.

Dr. McDonald, cross-examined.

Mr. Scoville. Have you ever met with an instance of temporary insanity? Yes, sir, I knew of a man who was insane for twenty-four hours. And then he got well? No. sir, he died. Believe Guiteau is feigning insanity and with that idea has been acting a part.

Dr. Randolf Barksdale. Am Superintendent of the Central Lunatic Asylum, Virginia. Visited prisoner in jail and observed him in court. Believe he is feigning in court; that he is sane now and on July 2d.

Cross-examination. I deny ever having said I believed prisoner to be insane.

Dr. John H. Callender. Am Superintendent of the Tennessee State Asylum. As to the hypothetical questions read, taking the facts set forth to be true, prisoner is undoubtedly sane.

Mr. Scoville. Suppose the person in the hypothetical question believed that he was in partnership with Jesus Christ & Co. in the establishment of the *Theocrat*, would that make any difference in your answer?

Mr. Porter. I object to that question as irrelevant and blasphemous, and when counsel puts such a question in a Christian Court I hold (whatever your Honor may hold) that it is time to rebuke him and his client. It is a hypothesis that no man who believes that God was our Creator should be permitted for one moment to present in a Court of justice and before this audience. The counsel can predicate his question on facts which have been proved, but not on those which assume that we make no difference between the Redeemer of mankind and ourselves.

The Prisoner. How about Christ and Paul? Paul was in partnership with the Saviour. Have not I just as much right as Paul?

Mr. Porter. I must insist, your Honor, in behalf of the Government and to vindicate it, that this criminal shall be remanded to the dock.

The Prisoner. You had better mind your own business, Porter.

Mr. Davidge. Yesterday was the commencement of the seventh week of this trial of the prisoner for the assasination of the ruler of fifty millions of people. Not a single day has passed without being characterized by aspersions on the part of the prisoner in contempt of the majesty of the law, in contempt of the authority of this Court, and imposing obstacles to the administration of justice. We have understood from the beginning that your Honor not only desired to accord to this prisoner the full measure of his constitutional rights, but that you wished furthermore not even to

appear to impinge on those rights. We have allowed day after day to pass without making any application for judicial coercion. The old practice was, that a man indicted for crime should always be in the dock, no matter who or what he should be. The relaxation has been for the benefit of counsel and not for the benefit of the prisoner.

The Prisoner. I am quiet when I am treated decently, not otherwise. It is all caused by the mean, dirty way in which the prosecution have conducted themselves. If they had conducted themselves as high-toned lawyers there would have been no trouble. It has been all caused by Corkhill and Porter.

Mr. Davidge. The place of the criminal is in the dock. General Sickles sat in the dock, and the Court refused to relax the rule, notwithstanding he was a lawyer in good standing, and at that time a member of the House of Representatives. Prisoner's outrageous, scandalous insults to my senior (Mr. Porter) furnish the necessity for calling for judicial decision on this motion.

The Prisoner. I am quiet enough when I am treated properly, but not when I am abused. No decent man would be. Sickles did not appear as his own counsel, and that is the difference between Sickles and me.

Mr. Reed said under modern practise the prisoner was allowed to sit beside his counsel, such was the case in New York, also in the Chicago Courts, and appealed for kindly treatment of a diseased, deluded man.

The *District Attorney.* The time has come for action in the interest and for the vindication of justice itself. There has been some public criticism with regard to the disgraceful conduct of the man here on trial, because his conduct was an affront to the dignity of the Court, offensive to good order and against decency. Your Honor has borne with it very quietly, and I am here now to say, I think very judiciously. At the opening of this trial we were met with but one issue, as to whether the man was sane or insane. There have been brought here by the Government the most eminent men in their profession, for no other purpose than to honestly determine whether the man was in his right mind or not. One of the points in settling this matter was the conduct of the prisoner in Court. It was desired that the man should be allowed the free use of any conduct he might be pleased to exhibit. The prisoner has had every indulgence which justice requires. He may abuse me and these distinguished gentlemen, but these utterances must come hereafter from the dock. He has around him policemen who do not belong to the official body of this Court. The President has appointed a Marshal, and the law imposes on him the safety and care of the prisoner. I want the Marshal to take him and put him in the dock and take care of him. I want no more special guards. I want him to stand here on trial as any other man would stand.

The Prisoner. You cannot convict me and you want to shoot me. That is the confession of weakness. You want me to be shot; but I don't believe the Lord will allow it.

The *District Attorney.* The Marshal is responsible if he escapes. Let the other officers who are responsible for the protection of private citizens, return to their beats.

The Prisoner. The American people will have something to say if you put me in that dock and I get shot, and God Almighty will curse you, Corkhill, you wretch, and any other man who attempts to do me violence.

Mr. Scoville. I made on objection to the motion, but I now disdain further concurrence. There is not one man or woman within hearing of Mr. Corkhill's voice but understood it to be an invitation for an assassin to step up and shoot that man when put in the dock.

Mr. Porter. That imputation against this gentleman, just as vile as the obscene charges of the prisoner, calls for vindication. From the beginning the District Attorney has observed a spirit of fairness, of honor, of clemency, of forbearance toward the prisoner unexampled in any State trial reported in Christian history. Once publicly when one of us was bowed down by an affliction such as comes to us rarely in life, the other members of this jury were menaced by this man. One of these jurors was threatened with a new inspiration by which he should die before this case came to an end.

The Prisoner. You don't know but the Lord will do it.

Mr. Porter. It may be in the province of God but not in the province of Guiteau. The assassin of the President will assasinate no more forever, and the voice which is not silenced now will be as dumb as that of his victim when the end of the law is reached. The time has now come when the law must make its appearance in this Court room, and when a man who pretends to be a maniac shall no longer sit at the counsel table and exercise privileges which you would accord to no member of the American Bar.

Judge Cox. It is hardly necessary to say that the conduct of the prisoner had been in persistent violation of order and decorum. In the beginning, the only methods suggested which could be resorted to to suppress this disorder were such as must infringe the constitutional rights of the prisoner. It had hitherto been an impression shared by the Court and counsel, that the prisoner's conduct and language in Court would afford the best indication of his mental and moral character, and contribute largely to the enlightenment of Court and jury on the question of his responsibility. At this stage of the trial, however, this object seems to have been accomplished. The proper place for a prisoner on trial for felony was the dock. He could only come within the bar to be arraigned and receive sentence. If the Court granted him the privilege of sitting beside his counsel, it was a privilege which could be withdrawn summarily. While the prisoner had the undoubted right to act as his own counsel, or to appear by counsel, he could not exercise both rights simultaneously. Having accepted counsel, the prisoner had waived his right to appear as such in

person. On consideration of all the circumstances, the Court thought that the motion would have to be granted and the prisoner will be placed in the dock, but shall have the fullest protection.

The Prisoner. To settle the matter, I will sit quietly here. Will it not be satisfactory if I keep quiet and stay here? If I sit in the dock I may be worse. I have no objection to going to the dock if your Honor says so. I move that the Court room be cleared if I am going into the dock.

The Prisoner having been placed in the dock, *Mr. Porter* said: It is to be borne in mind that the chimera which seems to haunt the prisoner has no foundation. He is in no danger except from the hangman's rope; and so long as an officer of the law stands beside him, no man will imperil that officer in the discharge of his public duty by firing a shot at the prisoner.

The Prisoner. I would not be afraid to go all over Washington alone or New York or Boston. Thunder that broadcast. God Almighty will curse the prosecution. Take time on this, Corkhill. You are having your own way but God grinds slow but sure.

Mr. Porter's objection to *Mr. Scoville's* question on the ground of its being irreverent and blasphemous was overruled by the COURT.

Mr. Porter. As this case will be historical, as our exceptions are utterly unavailing, as we can in no case appeal in behalf of the American Government and those they represent, I protest against this decision passing into a precedent.

Dr. Callender. I should not consider it an insane delusion for a man to profess himself as a member of the firm of Jesus Christ & Co. unless there were other evidences of disease. Do not think prisoner has been feigning insanity in the court room. He has merely been exagerating his characteristics of self-deceit, impudence, audacity and insolence.

The Prisoner. In other words, when I am assaulted, I talk back. Porter expects to get five thousand dollars for hanging me. He sees his money slipping away because the American people don't want me hanged, and he is mad at me.

December 29.

Guiteau. Coming up in the van this morning I noticed that the usual policeman were withdrawn. I want to say emphatically that if I was turned out tomorrow I could take care of myself, but as long as I am in custody of the Court, the Court must take care of me. The greatest danger of being shot is in coming from the van to the Court house. I want your Honor to order that I have the usual number of policemen coming up in the van. The cranks are not all dead yet, though they have been dying recently. I got fifty letters yesterday, most of them sympathetic, asking for my autograph. There were only two or three cranks in the whole lot. But one crank could do the business if he had the nerve. They

think I am a great man and a good fellow, but when I come into Court I am abused and villified. Human nature can't stand it and I won't stand it. When I am attacked I defend myself. If people treat me well, I treat them well. A crank might shoot at me. He wouldn't hit me, though. He's liable to shoot at me and hit somebody else. If your Honor please, there is altogether too much draught coming into this window. A draught coming on me and the captain.[34]

Mr. Scoville read the following letter to Senator Don Cameron:

Dear Sir.—I am on trial for my life, and I need money. I am a Stalwart of the Stalwarts; and so are you. You think a good deal of General Arthur, and so do I. My inspiration made him President and I am going to ask you to let me have five hundred dollars. If I get out of this I will return it, if not, charge it to the Stalwarts. Yours for our cause, and very cordially,

Charles Guiteau.

P. S.—Please give your check to my brother, John W. Guiteau, of Boston, and make it payable to my order.

Guiteau. I gave that letter to my brother ten days ago and told him to go to Senator Cameron and request him for $500.

I say that my brother is a perfect nuisance and he always has been. I want him to go off the case and go back to Boston. There is no fraternal feeling between us. In religious matters I associate with high-toned men like Mr. Moody and Mr. Pentecost, and in politics with Mr. Grant and all these kind of men, so far as I have got any friends. I don't think his feeling is worth a snap. This shows the mean character of my brother, to turn this private letter to Senator Cameron over to Mr. Scoville.

Dr. Walter Kempster. Am Superintendent of the Wisconsin Hospital for the Insane. Was given a cast of Guiteau's head and it is a very well shaped head that compared very favorably with the majority of heads in the community. (He produced a number of charts or diagrams, taken from the heads of different individuals with a conformator.) The shape of the head did not indicate anything of the sanity or insanity of the individual unless it deviated grossly from what they call a typical head, and the facts in the hypothetical question showed the prisoner to be sane. I saw him at the jail. He said he was not what experts would call insane, but he was legally insane. If he could get the jury to believe he was acting under an inspiration when he shot the President, that would be all he wanted, and would acquit him.

December 30.

Guiteau. Some of the leading people in America consider me a very fine fellow. Last night at eight o'clock, I received a tele-

[34] The officers closed the windows behind the prisoner.

graphic dispatch from Boston which I will read for the edification of this Court and jury and the American people. It says: "Boston sympathizes with you. You are yet to be President.—A Host of Admirers." I don't know but two men in America who want me hung. One is Judge Porter, who expects to get five thousand dollars for it. The other is Corkhill. Corkhill is booked to be removed anyway. He wants to get even with me, because he thinks I am the man that did it. It is said I am too severe in my talk. I have something to say on that. What do you think of this: Woe unto you, ye hypocrites, scribes and Pharisees! How can you escape damnation in hell? Ye generation of vipers! How can you escape the damnation of hell? Who said that? Who uses that language? The meekly and lowly Jesus. I put my ideas in sharp language and have the example of the Saviour for it. He called things by their right names. When anyone struck at Him He struck back. He did not lie down like a craven, and I don't. I refer my nomination to the Republican Convention for 1884. I think I will be there. I don't think this jury is going into the hanging business to enable Mr. Porter to get five thousand dollars. The American people don't want me hung.

Dr. Kempster. I do not believe in temporary insanity; that a person could be insane and wholly recover from it in an hour. Believe Sickles was sane when he shot Key, and that Coles, who shot Hiscock, was insane.

Mr. Scoville asked that he be allowed after the prosecution closed to call other experts on and would like a recess to prepare his questions. He requested that during this time the jury be allowed to separate and go to their homes. Mr. Corkhill objected.

The Foreman. The jury do not want to separate.

The Prisoner. These men are all high-toned Christian men and good men socially, but your money taken from the United States Government has been too much for them, that is all there is about it. They have been lying around this trial and sitting over there at Willard's hotel night after night in consultation with Corkhill and his associates and everybody knows it in this court room.

Mr. Porter. I must insist, your Honor, that if this clamor is continued the dock shall be removed to a distance from the jury which shall at least relieve them from the annoyance by the interruptions of the prisoner.

The Prisoner. Dismiss your indictment and that will dismiss the dock and let me go.

Mr. Porter. I do not ask for immediate action on this suggestion, but I ask that your Honor will consider the question.

THE COURT. If anything can be done to silence the clamor the Court will certainly do it. I believe counsel for the defense honestly desire it to be done.

Dr. John P. Gray. Am Superintendent of New York State Asylum. Have made a study of insanity and treated 12,000 cases. Have never seen a case where the only indication of insanity was an exhibition of immorality or wickedness; do not believe in moral insanity. After examination of prisoner in the jail I asked him: "Suppose the President had offered you the Paris Consulship while you were reflecting upon the subject of removing him, would you still have shot him?" The reply was: "Well, that would have settled the matter. I should have taken the position and left." As to the alleged inspiration, he said it was in the form of a pressure constantly upon him to commit the act. He also said: "You may add this to it; that the responsibility lies on the Deity and not on me and that in law is insanity.

The Prisoner. That is all there is to this case. There was no use of talking about it for the last six weeks. There were thirty-eight cases of inspiration of this kind in the Bible. Of course, we have to trust in the doctor's integrity as to what he reads now. I am willing to trust him. He is a high-toned gentleman and a man of integrity. If he happens to go wrong, I shall correct him, for I never forget anything.

December 31.

Dr. Gray. In looking over the history of the prisoner as given to me by himself, and considering his physical state through life, I could see no evidence anywhere when he had been insane or had any symptoms of insanity. As to the delusion of command by the Almighty, such self-control, self-direction and self-guidance as he had is antagonistic to anything that I have ever seen in my personal experience with the insane having such delusions. The fact of his preparing carefully for his own self-safety and protection is inconsistent with insanity. He stated that he had looked up the subject of insanity and had considered it in connection with his defense. That would not be consistent with anything in the nature of insanity I have observed. I took into consideration also the deliberation with which he proceeded, as well as the change of purpose which from time to time he manifested.

Guiteau. Dr. Gray is arguing the case for the prosecution, which no expert has a right to do. Let him confine himself to facts and not to argument. Porter will do that business—Judge Porter I mean. Tomorow is New Year's Day, 1882. I receive my calls this year in jail. Anybody can come that can get in. I will be glad to see anybody that can get in. I wish everybody a Happy New Year.

January 3, 1882.

Guiteau. I had a very Happy New Year. I hope everyone else did. I had plenty of visitors, high-toned, middle-toned and low-

toned people, taking in the whole crowd, showing that public opinion is in my favor. They were very glad to see me and expressed the opinion without one dissenting voice that I would be acquitted.

Dr. John P. Gray. Cross-examined. In giving my opinion I had not taken into account his evidence, but taking that element into account, my opinion would still be the same, that the prisoner is sane and was sane on the 2d of July. I do not believe in what is termed by some writers "emotional insanity" or "moral insanity." "Kleptomania" is simply thieving, "dipsomania" drunkenness and "pyromania" incendiarism. Their designations are simply convenient terms which have been invented to cover certain crimes. Insanity is never transmitted any more than cancer. A susceptibility to insanity is undoubtedly transmitted from parents to children but does not necessarily follow except from some profound physical disturbance.

January 4.

Guiteau. This is a good time to make a speech, but I promised the Marshal I would keep quiet today and I will try and do it.

Mr. Scoville asked permission to call other experts. The prosecution objected.

JUDGE COX granted the leave asked.

Guiteau. That is a sound decision and worthy of your Honor. I would not give a snap for the testimony of these experts one way or another. It is simply a question of dollars and cents with them. You could get twenty of them to swear that I was square as a rule on the 2d of July, when I did the act; while the fact is that I would not do it now for a million of dollars.

Dr. George M. Beard and *George W. McElfresh* were called but the Court ruled that the questions asked were not relevant.

Guiteau. They know they have got no case. Dismiss the indictment and let us go home. I want to go home.

Mr. Scoville. I desire to make a proposition to the prosecution. There have been numerous experts examined on both sides testifying contradiction to each other. Drs. Godding, Nichols and Walker have been present throughout the trial, though not summoned by either side. I propose that the Court should call these three gentlemen to the stand and question them. Neither the defense or the prosecution would ask a question. Let their testimony go to the jury without note or comment and let the jury decide upon it. These gentlemen were not paid to come here.

Guiteau. They are beyond Corkhill's money and that is what you cannot say about some of these men. They give an opinion for $50 or $5,000.

The *District Attorney* declined the proposition.

Guiteau. You are in great haste to close now that your testimony is all in. All I want is fair and square surrebuttal. If you will come like men and submit it without argument I give you notice now to do it.

James J. Brooks. Am chief of the secret service of the Treasury. Visited prisoner with my son and Mr. Rathbone in his cell at midnight, July 2nd. He said he was a Stalwart; that his act was a political necessity. Told him we were about to arrest two or three people and he responded: "Don't do it, you will arrest innocent people. Next day he said he had thought and prayed over this for six weeks. I told him that the President was suffering terribly. He said: "I am very sorry. I wish I had given him a third bullet and put him out of his misery."

The Prisoner. It is proper for me to say that Mr. Brooks has stated the conversation that occurred between us very correctly. He said that the people were against me and I said that the Deity was with me. I don't want this officer hanging around me. He is a nuisance in this case. I talk to 50,000,000 people. What are you? You are nothing. Don't spoil it by cross-examination as you spoil everything. You ought to have sense enough to let the witness go but you are a jackass on the question of cross-examination. I felt light-hearted and merry when I got into that cell—a mountain lifted off me. Everybody was happy except a few cranks, for it united the party. Mr. Garfield did not die, but the Lord wanted him and He removed him gently and gracefully. Let me alone or I will slap your mouth. I will talk when I feel like it.

Mr. Scoville then read letter written in 1875, by L. W. Guiteau to Mrs. Scoville, which said that the prisoner had been at Freeport, endeavoring to borrow $25,000 to aid in his *Inter-Ocean* project: "To my mind he is a fit subject for a lunatic asylum and if I had the means to keep him, I would send him to one for a while at least."

Guiteau. Is your object in reading that letter, Scoville, to show that my father was a crank or that I was? You are a crank. That is my opinion of you. You have no more wit than a ten-year-old schoolboy.

January 7-9.

JUDGE COX said that it was the custom here to settle questions of law before the arguments to the jury.

Mr. Davidge read the instructions asked by the prosecution: 1. The legal test of responsibility is whether the accused at the time knew what he was doing and that what he was doing was contrary to the law of the land.

2. If this constitutes no defense, he believed that he was producing a public benefit or carying out an inspiration of Divine origin or approval or that he was impelled by a depraved moral sense, whether innate or acquired or by evil passion or indifference to moral obligation.

3. The claim of the accused that his free agency was destroyed by his conviction that the death of the President was required for the good of the American people and was Divinely inspired, even if it really existed, could not afford any excuse when he knew what he was doing and that it was contrary to law. To have such effect the act must have been the result of an insane delusion which was the product of disease, and of such force as to deprive the accused of the degree of reason necessary to distinguish between right and wrong in respect of the act.

Mr. Scoville asked instructions based on insane delusions and irresistible impulse; also that the death having been in New Jersey no crime had been committed here except an assault.

The *Counsel* on both sides argued the questions of insanity and jurisdiction at length.

JUDGE COX accepted the theory of the prosecution as to insanity and said he would so instruct the jury and ruled that the jurisdiction was complete where the fatal wound was inflicted and therefore the place of death was immaterial.

(During the arguments there were frequent interruptions by the prisoner.)

The Prisoner. I didn't know the difference, sir, between right and wrong. I had no choice. If I had had I would not have done it. The Lord knows it and the American people are beginning to know it. God's law is better than man's law. In that Coleman case the jury went directly against that charge. There is plenty of law on the other side.

Mr. Davidge. Listen to him and see what a farce has been acted here for these many weeks. He not only knows the difference between right and wrong but he knows the law of the case.

The Prisoner. I do not pretend to be any more insane than yourself, and I have not been insane since the 2d of July. It was transitory mania that I had, and that is all the insanity that I claim.

Mr. Davidge. He knows the principles of law applicable to the case as accurately as any lawyer.

The Prisoner. I do not pretend that I do not. My head is as good as yours or as Porter's I am no fool. The Lord does not employ fools to do His work.

Mr. Davidge. Mr. Scoville has said that this man was a fool for three weeks.

The Prisoner. Scoville is a fool himself. I repudiate entirely Scoville's theory of the defense. I do not even want him to address that jury. I will do that business myself. Two hours' speech to the jury will settle the question.

JUDGE COX. Keep silence now and let the argument go on.

The Prisoner. That is all right, your Honor, but I repudiate the idea that I am insane. I never claimed that I was insane. I say that it was God's act, and that He has taken care of it and will take care of it. If you get the Deity down on you He will

stick to you all your days, in this world and in the next. I notify you now. You ought to be ashamed of yourself, Davidge, for selling yourself for a little filthy lucre. God Almighty will curse you prosecuting men. That is the opinion of the American press, too. I want to get a chance at that jury for two hours' talk.

Mr. Porter. When the prisoner swore on the witness stand under the solemnity of an oath that he believed he was predestined to remove the President he omitted to add the further fact that he was predistined by the same power to be hanged for it.

The Prisoner. We haven't got to that point yet, sir. It is not likely we shall. The Lord is fixing it, Mr. Porter.

Mr. Porter. We are traveling toward it and shall reach it all the sooner for the interruptions.

The Prisoner. You have got mouth enough for a whole family of Porters.

Mr. Porter. This man claims that he was inspired by God and deluded by God into the belief that it was his duty to violate God's law.

The Prisoner. There are thirty-eight cases of violation of that kind in the Bible where people were ordered to kill. Some people think I am afraid of going to the gallows. I am not. If the Lord wants me to go I will go. Put that down. I say I am right and the American people are saying I did right. No more of this whining about the gallows.

THE SPEECHES TO THE JURY.

MR. DAVIDGE FOR THE PROSECUTION.

January 12.

Mr. Davidge said he did not intend to make a set speech, but merely to aid the jury, whom he complimented for their conduct and attention throughout the trial, in arriving at their verdict. He then made a resumé of the points claimed by the defense, stating that there was but one single point for discussion and consideration—the subject of insanity. He showed that the attempt to shift the responsibility of the President's death upon the medical attendants had been abandoned. He called the attention of the jury to the definition of malice, and claimed that the degree of reason necessary to make a man responsible is very limited. A man may be styled a crank or off his balance and even partially insane, and yet may be abundantly responsible for crime. What is the act committed here? Murder, murder, murder by lying in wait—what is commonly called assassination. How great a degree of intelligence does it take to inform a man that that is wrong? What degree of intelligence was necessary to make a lawyer know that it was in violation of the law of the land to kill? What degree of intelligence was necessary to make a religious man know that the everlasting edict had gone from Almighty God, "Thou shalt commit no murder?" He tells us when the conception came,

and it came in the night, for I do not think that in the sunshine such an idea could enter the soul even of that wretch.

The Prisoner. It came when the Lord got ready for it. I was praying about it to find out the Deity's will. If you prayed more you would be a better man than you are.

Mr. Davidge. The first branch of the defense—that through disease of the brain the prisoner, when he committed the crime, was unable to appreciate the difference between right and wrong in respect of his act. It is a mockery and it is apparent that this defense is not only a false but a fabricated one. After reviewing the history of the Guiteau family, he proceeded to a review of the life and habits of the prisoner, as exhibited by the evidence. Mr. Luther W. Guiteau, while subscribing to the views of Mr. Noyes, simply did so as a theorist or, if I may say so, as a philosopher. The father was utterly ignorant, as the degenerate son admits, of the interior workings especially the social wickedness, of that institution. The father looked upon it from a Bible standpoint. The son, however, entered into the community, remained there six years and, as I say, wallowed in its iniquities.

The Prisoner. And I say it is false. I didn't wallow. I was just as pure as you are, and a great deal purer probably. I went there to save my soul, not for lust. Put that down, Davidge; don't you forget it.

Mr. Davidge. Did it not come out that he was capable of writing lectures, however indifferent? Did it not come out that he had insured his life as a sane man? Did it not come out that he was a lawyer and had practiced law, had tried cases? Did it not come out that he had written multitudinous letters? Did it not come out that all that had gone before had been a sham and a cheat? You know it did.

The Prisoner. Talking about brains, if you read some of the letters I got you would think I was the greatest man of this age.

January 13.

Mr. Davidge dissected the evidence of witnesses for the defense that the prisoner was an imbecile. Upon the stand he had shown wonderful memory, logical reason and intellectual ability, but had been shown to be such a monster of corruption, deceit, depravity and wickedness that the country looked on with a shudder. The *Inter-Ocean* scheme was a proof of his audacity and egotism. Dr. Spitzka never denied the prisoner's legal responsibility, and even his evidence brought the prisoner within the reach of law and punishment. The two moral insanity men, neither of whom could or would admit that he believed in a God, were permitted by the defense to retire. In answer to the prisoner's claim of Divine inspiration he read the first chapter of the Epistle of James, 13th to 15th verses. The true explanation of the crime was to be found in the traits which had been developed of inordinate vanity, desire of notoriety and reckless egotism. I told you in the beginning that

I did not come here to make a set speech. I told you that I came here to help as far as I could (and to help honestly) a jury of my country in the discharge of an important and solemn duty. I began my remarks without an exordium, and I close them without peroration, except to say to you that your countrymen and Christendom are waiting for your verdict.

The Prisoner. And I thank you, Mr. Davidge. That is a very light speech. I hope Porter will go light, too. You had better see General Arthur, Mr. Porter, before you begin to talk. I wrote him a note on this matter the other day. In justice to this Court, myself and Mr. Davidge, I wish to say that I withdraw what I said yesterday. I received a letter denouncing Mr. Davidge and I thought it was true. Upon inquiry I find that Mr. Davidge is a high-toned Christian lawyer, and I withdraw all remarks I made injurious to him. I haven't changed my opinion about Corkhill, however. I am light on Davidge and strong on Corkhill.

January 14.

The Prisoner. I signed twenty-five checks yesterday—at least checks payable to my order—representing about $15,000. I suppose some of these checks are good. I do not wish anyone to send me checks that are not good. We have got two or three checks that are worthless. I want people to send me good checks or none. I do my own banking and sign these checks payable to my order.

THE COURT said that he had been informed that the prisoner was preparing an address to the jury. He would be loth in a capital case to deny any prisoner an opportunity to present a proper argument in his own behalf. But he was persuaded that any address from this prisoner would partake of the character of his former testimony and interruptions; that it would be a rehash of his testimony. No person had a right to do that. The counsel for the defense might examine the prisoner's manuscript and, if they thought proper, read it to the jury.

Guiteau. I wouldn't trust my case to the best lawyer alive. I have been here in my own behalf and my speech will be published. I have got an encomium on your Honor in that address. If I am denied the opportunity to speak in my own behalf I will withdraw it. You will go down with a blackened name to future ages and I tell you so to your face.

MR. REED FOR THE PRISONER.

Mr. Reed. At the time this awful offense was committed, everyone who read the details instinctively believed that the man must be insane. If the spirit of the dead President could appear before the jury, he would say to them, "Let him free, he cannot have been sane." If the jury after returning to their room solemnly and seriously came to the conclusion that the man was sane at the time of his offense, they could not hesitate nor falter in saying that he was guilty, but if they had a reasonable doubt of his sanity, it would

be best for the cause of free government throughout the world that the jury should say so by their verdict. He read from the fourth chapter of Matthew as to the healing of lunatics by the Savior, and adjured the jury to heal this man, not hang him and put him to death. He went over the history of the prisoner's life, and claimed that the incident of his striking his father was the first proof of insanity, and the raising of an axe against his sister was further evidence of it. The letters of the prisoner at the time he left the Oneida Community were proofs of an unsound mind.

Charlotte Corday poniarded in his bath Marat, then the chief man of the French nation, she was guillotined in four days afterwards. The picture of that fair French girl could be seen in the Corcoran Art Gallery, looking through the bars of her prison, appealing to posterity, insane. Her execution had disgraced the name of the French nation. He referred to the cases of Lawrence who had fired at President Jackson; Hadfield, who had fired at George III. of England, and Oxford, who had fired at Queen Victoria; in all of which cases the prisoners had been found not guilty by reason of insanity and had been sent to insane asylums. There is a parallel between the case of Oxford and the present case. Oxford, like Guiteau, had bought a pistol and practised with it. He had been deliberate, his intention had been fixed, yet he had been acquitted. Also a similarity existing between this and the case of Lawrence. Lawrence had been acquitted, and his case shows that the present case was not the only one in which the prisoner had disturbed the peace and quiet of the Court room.

You twelve men sitting there today on the facts and the evidence are superior to all powers on the earth. No emperor, no potentate, no combination of potentates, no court, no president has any right whatever to invade you upon that question. You are superior to all the powers of the earth on the evidence in this case. Every man of you is a king. You and you alone are to say what the evidence is, what witnesses shall be believed, what disbelieved and what weight shall be given to the testimony of one witness or another. Your consciences under your oaths to your God are to be your only guide. The testimony of Mr. Reynolds is that of a sneak and a spy, yet that very evidence sustains the theory of mental derangement.

I assert that the condemnation of this man to the gallows and his execution will be an infamy beyond description. It will be an indelible stain upon American jurisprudence and upon American juries.

Think of the scene: for if you condemn him to the gallows, although not there in body you will be there in mind. I ask you to think of the scene if such a day shall ever come. I do not believe it ever can come under this evidence. This man on the day of execution is brought out from his cell with the same sad, pale face; the same weary, wandering eye. The officers gather around him; they pinion him, binding him with cords so that his muscles cannot struggle or quiver. They cover him with the black

robe; they shut out the light from him and lead him to the scaffold and he is sent into eternity.

The Prisoner. I would rather go that way than be smashed up on a railroad as those poor fellows were last night.

Mr. Reed. A lunatic condemned to the gallows! A lunatic who, if our Savior were on earth today, He would heal. The picture is not overdrawn, I leave it with you. Gentlemen, I am very much obliged to you for the attention you have given me. It has been very careful. I only ask you in closing, pray do that which shall not in after years bring a blush of shame to your cheeks.

Guiteau. Reed is a good fellow, but I would not give a cent a bushel for his rubbish. If I could only have a talk with that jury I could give them the right theory.

MR. SCOVILLE FOR THE PRISONER.

January 16.

Mr. Scoville thanked the jury for the patience with which they had listened to the evidence, and expressed his obligations to members of the Bar all over the country for the generous, unasked for assistance which they had rendered him, and which had enabled him to present the case not wholly at a disadvantage. He appealed to the jurors to divest their minds wholly of any preconceived opinions on the case. He would not attempt to appeal to the sentiments of the jury, the gentleman who would follow him (Mr. Porter) would attempt to influence their emotion; he would address himself to their hearts rather than their intellects; and if the question was to be decided by emotion, by passion, by prejudice, by fear, then the defendant was lost—the defendant would be hanged. The issue was whether or not the prisoner was insane on the 2d of July last when he shot the President. In this case there had been a conspiracy on the part of the District Attorney, Mr. Porter, Mr. Davidge and the expert witnesses (Drs. Hamilton, Macdonald, Kempster, Gray and Worcester) to hang the defendant. He also complained of the conduct of the press in prejudging the case. I propose—if Mr. Porter shall in his closing argument falsify the law or the evidence—to correct him then and there every time.

The Prisoner. So shall I.

Mr. Scoville. I do not propose to let Mr. Porter put his own coloring on the facts and to distort them. If he makes a single allegation of facts or of law that is false I shall try to prevent it.

The Prisoner. I will attend to him.

Mr. Porter. Guiteau will attend to me.

Mr. Scoville. One of their propositions was that the case must turn on the iron rule whether the man knew the difference between right and wrong. That was not the rule here, it had been the rule in England 250 years ago, where, if a man had sense enough left to know more than a wild beast, he must be executed. It had been well termed "the wild beast rule." It was not the law of this country, except as laid down by Judge Davis, of New York.

The Prisoner. And Judge Davis' jury rebuked him. They had more sense than he had.

Mr. Porter. The rebuke consisted in the jury convicting the prisoner.

Mr. Scoville. From the prisoner's standpoint, from his diseased view of it, the act was not wrong. It was right, and so Mr. Davidge's proposition was not a correct proposition of law. The inmate of an insane asylum when he attacked another inmate or an officer of the institution, knew that he was committing a crime, knew the difference between the right and the wrong of the act; but nobody ever heard of one of these insane people being held to account in a Court of Justice under this "iron rule of law.". The prisoner might have had on the 2d of July last enough sense and judgment to know that it would be wrong to pick up a pocketbook which he found on a bench in the railroad station and transfer it to his pocket. That was not the question. If the prisoner was on that morning overpowered by the consciousness (coming through his diseased mind) that the Lord was requiring him to do an act for the good of the country and to save the nation from war, then it was the result of a diseased mind, and the act was, in the prisoner's view of it, right.

They raked up every little act in the prisoner's life on which the jury were asked to convict and hang this man, but there was only one thing in his history for which he should hide his head, and that was the crime of adultery. And even that crime was not one which would justify the hanging of this man; and he recounted the incident of the woman taken in adultery, and how when Christ looked up after writing in the sand, her accusers were all gone.

As to Shaw's testimony of the oroide watch, this is another step in the vast career of crime which leads on to the gallows. As to the conversation in which the prisoner said he would imitate Wilkes Booth, I believe both these witnesses perjured themselves. Shaw wanted to bring this man to the gallows. I could honor Mason, McGill and Jones as compared with Shaw. They were willing to take their lives in their hands, if necessary. They were willing, at least, to stake their personal liberty on the issue. But Shaw sought to hang this man without assuming even the risk of a prosecution for perjury.

The Prisoner. You had better leave him with a pshaw and let him go—(after a pause)—Pshaw I mean. They don't see the pun, do they?

January 17-20.

Mr. Scoville. The prisoner wishes to say a few words.

Judge Cox nodded assent.

Guiteau (reading)

I intend no disrespect to this honorable Court, I desire no controversy with this honorable Court. I am satisfied with the law as proposed by Your Honor. But I have a still broader view of the

law which I ask your Honor to follow—to-wit, that if the jury believe that I believed that it was right for me to remove the President because I had special divine authority so to do, and was forced to it by the Deity, they will acquit me on the ground of transitory mania. Sickles, McFarland and Cole were acquitted on the ground of transitory mania. In my speech, published yesterday in all the leading newspapers of the country, and which I presume Your Honor has read, I gave my reasons for asking Your Honor so to charge. Mr. Reed made a brilliant and lawyer-like plea for the defense, and Mr. Scoville is making a strong argument on his theory. But neither Mr. Reed nor Mr. Scoville represents me in this defense. I am here as my own counsel, and have been from the beginning. No one represents me to this jury. I know my feelings and inspirations in removing the President, and I have set it forth in my speech yesterday. And I ask Your Honor, in the name of justice, in the name of the American judiciary, in the name of the American people, to allow me to address that jury of my countrymen in a case where my life may be at stake. If a man upon that jury has a doubt as to his duty to acquit me my speech will probably settle it in my favor. Therefore, in the interest of justice, it is of the greatest importance that the jury should hear me in my defense.

JUDGE COX. I will take the matter into consideration.

Mr. Scoville resumed his argument and occupied half a day in complaints of the unfairness of the prosecution, and had some colloquies with the opposing counsel. He reviewed the prisoner's life from about 1859, and insisted upon a parallel between Guiteau and his father who, he contended, was always on the border-line of insanity, though able to attend to business. He claimed that the failure in business and consequent lack of a steady employment on the part of the prisoner had caused the rapid development of insanity in his case.

He did not think the world had ever seen or would ever see a second Guiteau. Dr. Gray was one of the conspirators to hang the prisoner and he denounced certain politicians who were seeking to hide their own shame behind the disgrace of this poor prisoner and make him the scapegoat of their crimes. He denounced by name President Arthur, General Grant and Mr. Conkling as being morally and intelectually responsible for this crime. He called attention to various incidents in Guiteau's life, arguing his insanity as evidenced by the undoubted lack of something in his mental composition possessed by other men.

Guiteau. Give them that dog story; it will cost Corkhill $200 to get it here. There has been some talk here about politics and I desire to say a word on the subject. There are two or three cranky newspapers in this country, to-wit: Whitelaw Reid of the *New York Tribune;* Medill of the *Chicago Tribune;* Halstead of the *Cincinnati Commercial,* and George William Curtis, the man-milliner of New York. The weather has been rather cool lately and they had better lay out under the trees and get cooled off a little.

They are about the only newspaper cranks in the country. They had better join the Grant-Guiteau-Conkling and Arthur combination and get into good company and be good Republicans.

Mr. Scoville. He reviewed the medical testimony. He first commented upon the evidence by Dr. Hamilton. If the jury discovered that that gentleman had a disposition to testify in favor of one side or the other the fact must detract from the value of the testimony. The jury could not give it as much credit as if it had been given plainly and frankly. He was prejudiced against the defense, for in a single answer given by him he had seventeen times used strong adjectives which could tell against the prisoner where they were not necessary to express his meaning. The use of these adjectives was possibly inadvertent; but still they left the foot-tracks by means of which the feeling of the witness could be followed and discovered. Dr. Hamilton said the prisoner's head was perfectly symmetrical, and declared that it was not often that a compass and rule could demonstrate that in giving his opinion a man was telling a lie. But he would show the jury a diagram of the prisoner's head as drawn according to rule.

He ridiculed the testimony of Dr. Kempster upon the subject of asymmetry in heads, declaring that his representation of the shape of the District Attorney's head was no more the shape of it than it was the shape of a square cube. Dr. Kempster's diagram of the prisoner's head was false, and he would, if necessary, bring the prisoner before the jury, and by actual measurement of his head show that Kempster lied when he said that his diagram was a correct representation of Guiteau's head.

Guiteau. Those experts hang a man and examine his brain afterwards. Judge Porter has been pretending to be sick for two or three days. I hope there will be a providence that will keep him sick. He ought to go down below quick and then call for Corkhill.

Mr. Scoville said he had discovered that Colonel Corkhill's prejudice against one witness arose from the fact that he had once been sued by a servant for $3 and had been tried by him, who was a Justice of the Peace.

The Prisoner. If Corkhill was sued for all he owes it would take all the courts in this city to do the business.

Mr. Scoville dwelt at great length upon the symmetry of the prisoner's head as compared with other heads and mentioned the District Attorney's among others.

The Prisoner. Corkhill's is a swelled head.

Mr. Scovill criticised the testimony given by Dr. Gray, whom he characterized as the big gun which the prosecution had reserved until the close of the case, supposing that he would carry the jury by his grand, round, well-proportioned, overwhelming declarations. If he attempted to follow out all the evidence and take up the witnesses in detail and point out the inconsistencies in the testimony on behalf of the prosecution, he could easily detain the jury a week longer. He would dwell no longer on the facts of the

case, but would simply mention some considerations which should be called to their attention. Human laws were made for sane people. Laws were enacted to reward or punish people who were clearly of sound mind.

The Prisoner. This gives me a chance to say that the New York Court of Appeals decided yesterday that our theory of insanity was correct in this case. Thank you, Mr. Judge.

Mr. Scoville then argued in favor of the abolition of capital punishment. The very fact of the prisoner restraining his hand went to prove that he was acting under delusion; for had his act been one of depravity, as the prosecution claimed, he would not have needed another night to allow that depravity to be developed in his heart.

The Prisoner. I never had any conception of his removal as a murder. My mind is a perfect blank on that and always has been.

Mr. Scoville. You, gentlemen, are liable to err. No twelve men could be collected in the United States who would not be liable to make erroneous decisions; but when we collect twelve men after careful questioning, fellow citizens who understand all our relations of life and society, who know the value of property, the value of liberty, the value of life; men who have had varied experience, who have come here from the East, from the West, from over the seas, in one common citizenship, building up, maintaining, resolved to perpetuate these institutions, I feel more secure in the proper administration than I would under any other mode of adjudication. We are safe and shall be safe in the juries of our country so long as they are honest and well intentioned. It is not requisite that you have a high degree of intelligence; it is requisite that you have honest hearts, cool heads and a disposition to do what is right. But above all you should have moral courage, stability of character, moral stamina to determine that what may come, what may be said, you will do what is right and just toward your fellow men and in the sight of your God. That is what I expect of you. I simply ask you to take the evidence into consideration; I ask you never to question yourselves as to what will be the result of your verdict in regard to your position in society; as to whether your fellow men will approve it or not; as to the result in any way except that you should believe it to be just. I ask that you will render a verdict without fear or without hope or favor of reward, and I believe, gentlemen, that you will do it.

The *District Attorney* called the Court's attention to the desire of the prisoner to address the jury. He did not intend that any error should get into the record upon which there was any possibility that a new trial should be allowed; he, on behalf of the Government, withdrew all objection to the prisoner being heard.

January 21.

JUDGE COX. You may proceed now.

Guiteau. I sit down because I can speak better, not that I am afraid of being shot. This shooting business is getting played out. (Reading). The prosecution pretend that I am a wicked man.

Mr. Scoville and Mr. Reed think I am a lunatic, and I presume you think I am. I certainly was a lunatic on July 2d, when I fired on the President and the American people generally, and I presume you think I was. Can you imagine anything more insane than my going to that depot and shooting the President of the United States? You are here to say whether I was sane or insane at the moment I fired that shot. You have nothing to do with my condition before or since that shot was fired. You must say by your verdict sane or insane at the moment the shot was fired. If you have any doubt of my sanity at the moment you must give me the benefit of that doubt and acquit me. That is, if you have any doubt whether I fired that shot, or as the agent of the Deity. If I fired it on my own account I was sane. If I fired it supposing myself the agent of the Deity I was insane and you must acquit. This is the law as given in the recent decision of the New York Court of Appeals. It revolutionizes the old rules and is a grand step forward in the law of insanity. It is worthy of this age of railroads, electricity and telephones, and it well comes from the progressive State of New York. I have no hesitation in saying that it is a special providence in my favor and I ask this Court and jury so to consider it. Some of the best people of America think me the greatest man of this age, and this feeling is growing. They believe in my inspiration and that Providence and I have really saved the nation another war. My speech setting forth in detail my defense was telegraphed Sunday to all the leading papers and published Monday morning, and now I am permitted by His Honor to deliver it to you. Only I here desire to express my indebtedness to the American press for the able and careful way they have reported this case. The American press is a vast engine. They generally bring down their man when they open upon him. They opened upon me with all their batteries last July because they did not know my motive and inspiration. Now that this trial has developed my motive and inspiration their bitterness has gone. Some editors are double-headed. They curse you today and bless you tomorrow, as they suppose that public opinion is for or against you, which shows the low grade of their humanity. I desire to thank my brother and sister and my counsel, Scoville and Reed, for their valuable services. I intend to give my counsel ample fees, especially Scoville. He is a stanch man and a hero, and I commend him to the great Northwest as a fine lawyer and a Christian gentleman. We have differed as to this defense. He has his theory and I have mine. I told him to work his theory as he thought best and he has done it in a splendid way, and I commend him for it. Considering his slight experience as an advocate he showed himself as a man of marked resources. In other words, you cannot tell what is in a man until he has a chance. Some men never have a chance and go down in obscurity. There are plenty of brains in this world. Not every man has a chance to develop his brain. It is brain and opportunity under Providence that makes a great man. I return thanks to the Marshal and his aids, to the Superintendent of Police and his force,

to the warden of the jail and his keepers and to General Ayres and his forces for services rendered me. I return thanks to this honorable Court and bright jury for their long and patient attention to this case. I am not here as a wicked man or a lunatic. I am here as a patriot, and my speech is as follows—I read from the *New York Herald.* He then proceeded to read a rambling effusion he had previously given to the press. In a declamatory manner he rolled forth his sentences, holding the paper in one hand and with the other gesticulating and emphasizing his utterances. The words, "Rally round the flag, boys," he repeated in a sing-song tone, waving his arm in the air above his head. "And for this I suffer in bonds as a patriot," he quoted in an oratorical manner, and then repeating the sentence he allowed his voice to tremble so that the words were nearly inaudible. The trembling in his voice continued till he spoke about his mother and declared that he had always been "a lover of the Lord," when he broke down completely, and, applying his handkerchief to his eyes, wiped away the tears which, naturally or forced for the purpose of exciting sympathy, coursed down his cheeks. However, he immediately recovered himself, and in his usual tone of voice proceeded with his address. When he came to his description of the attempts made upon his life by Mason and Jones he stood up for the purpose of the more vividly pointing out to the jury the narrow escapes which he had had. With something of pride he held up his arm and showed the rent made in his coat by the bullet fired by Jones and made his old declaration that it was a proof that the Lord was watching over him. A laugh ran through the audience as the prisoner read and reread his declaration that it would be perfectly safe for him to walk the streets of Washington or New York. Coming down to the extracts from his mail he read them with extreme unction, particularly a rhyming one dated, Philadelphia, New Year's Day, 1882, which he read in a sing-song way, which caused a laugh among the audience. Reaching that portion of the speech where an abstract from his address to the American people is inserted, he folded up the paper, took off his glasses and squaring himself in his chair proceeded to repeat the extract from memory. In doing this he assumed his most oratorical style, modulating the tones of his voice, using both arms to aid him in emphasizing his dramatic utterances and as far as possible acting the extract. Coming down to his quotation from "John Brown's Body," he threw back his head and sang a verse from that old song, much to the amusement of the spectators. He read from his speech:—"Put my body in the ground if you will: that is all you can do. But thereafter comes a day of reckoning. The mills of the gods grind slow, but they grind sure, and they will grind to atoms every man that injures me;" and supplemented it with the remark, "as sure as a hair of my head is injured this nation will go down in the dust, and don't you forget it."

Among the prisoner's other remarks during the last two days of Mr. Somerville's speech were these:

My wife had been unfortunate and that is no reason that fellow should not have married her. The whole thing was a swindle. I know she is a good woman and therefore I let her alone. She didn't suit me exactly.

It didn't require any brains to do that business, that's the reason I got the job.

Everyone knows that Corkhill is crazy. You are worse than him.

Corkhill is an authority on the devil, Dr. Gray is a big man with a big mouth. I will mark him.

I pray every night of my life. If you would pray some you would be a better man. You wouldn't be here for blood-money.

I was the only one who had Divine authority to do it. A great many wanted to do it.

January 22.

MR. PORTER FOR THE PROSECUTION.

Guiteau. I desire to say before Judge Porter proceeds that some crank has signed my name to a letter in the papers this morning. I repudiate that kind of business. I also understand that two cranks have been arrested this morning. One of them has been laying around here since Saturday. I wish to say that I am in charge of this court and its officers, and if anyone attempts to do me harm they will be shot dead on the spot. Understand that. When I get outside I can take care of myself.

Mr. Porter said that thus far the trial had been practically conducted by the prisoner and his counsel, Mr. Scoville. Everybody had been arraigned, everybody denounced, everybody interrupted and silenced at their will. He had received notice from both of them that he was to be interrupted and silenced now, and that he was not to be permitted to utter anything which any of them might disapprove. His strength was very much gone, but he believed that what he desired to say to the jury would be said, and that what would be said would be said in no rhetorical form. He would deal only with the evidence. The jury had heard the evidence amid clamor, objections, interruptions, vituperations and blasphemy. He would say, in justice to the prisoner, that of the three arguments which had been made by him and his associate counsel, the one most free from objection was the one delivered by himself. Aside from the impiousness of his statements, it was free from the deliberate misstatements and perversion of testimony that ran through the arguments of

his associate counsel. In the addresses of the other two counsel, and especially of Mr. Scoville, there had been an attempt to carry out the plan first proposed, of misrepresentation and perversion of testimony. It was deliberate, designed, cunning, done by subterfuge and indirection. "My relations to this case are simply those imposed on me by the Government, and most cordially accepted by me, because I believe that the interests of public justice demands that the cold-blooded and deliberate assassin of President Garfield shall not leave this dock until he is under sentence of death, that he shall leave off the shackles he wears, only to pass to the shackles of the murderer's cell. He, in the meantime, invokes the mercy of that God who spares even him who spares not. He did not spare Garfield, though he said he was a good man whom he was transferring to Paradise; he did not spare that wife who, by her leaning on Garfield's arm, saved his life on one occasion. He did not spare the aged mother whom the son so loved. He spared no one. A murderer at heart then, he is a murderer at heart now, and he has shown it. You, gentlemen, have witnessed the daring of this man on this trial. I wish to know if, unshackled and assured of the mock defense of insanity to protect him, he had held the "bull-dog" pistol in his hand, he would not have put an end to this trial the other day when His Honor, in his own personal views of propriety, prohibited him from making a last speech. In the violence of his temper he warned His Honor that he would erase from the record he had made for the American people, and for all time, the commendation he had bestowed upon him, and would send his name blackened down the course of history. Do you believe that the man who shot the President, who dogged him at night and went to church to murder him, would not, if he felt safe, instead of sending His Honor's name, coupled with infamy, thundering down the ages, have sent a cartridge into His Honor's breast? This man, who appeals to you in tears and with such pathos, through his counsel, for dew-fallen mercy—this man showed his idea of mercy to others when, on one occasion, he turned

to you and said that that God whose name he has so often blasphemed, would interfere to strike down one of your number before you should be able to convict him. This is the man who invokes the tender and merciful consideration of his case. A man, brutal in his instincts, inordinate in his love of notoriety, eaten up by a thirst for money which has gnawed at his soul like a cancer, a beggar, a hypocrite, a canter, a swindler, a lawyer who, with many years' practice, never won a case. Would you know why? No court, no jury, failed to see that he was a dishonest rogue and such men cannot win cases. A man who has left his trail in various States; a man who has lived on other people's funds and appropriated them to his own use, in breach of every trust; a man who is capable of aping the manners of a gentlemen; a man who, as a lawyer, had this notion of morality, that when he had taken debts to collect and collected them by dunning the debtor, held them against his client and chuckled over the success of his scheme; a man who sold oroide watches or pawned them to get money through falsehood and misrepresentation; a man who was capable of endeavoring to blast the name of the woman with whom he had slept for years and acknowledged as a virtuous wife; who was capable of fawning himself off on Christian committees and Christian churches as a pure and moral man, who spent six years in fornication at the Oneida Community; a man who afterward, when he wished to get rid of that wife, consulted the commandments of God, and read "Thou shalt not commit adultery," and went out and committed it with a street prostitute. A man so void of all honor, so possessed of the spirit of diabolism that he was capable, at the age of eighteen, of stealing up behind his father and giving him a blow, and, relying on the fact that he was then a stronger and larger man than his father, exchanged blow for blow with him, and when the old man, by a fortunate blow, drew blood from his nose, whimpered as he whimpered the day before yesterday and surrendered, coward, murderer at heart. He had no "bull-dog" then, but the spirit in which he fired at Garfield

was the spirit in which he struck his father and raised an axe at his sister. A fiend at eighteen when he struck his father, he was a fiend at twenty-five, and is a fiend now.

Mr. Garfield as a soldier, a lawyer and a statesman, stood so high that he had been elected to the Presidency by a vote so clear and so strong that all the people said "Amen." And that was the man against whose life this prisoner had been plotting for six weeks, plotting without malice, as he said, plotting, with no counsel except the fiend of darkness, who had prompted the crime. He complains that I call him an assassin. I called him an assassin from the moment that he swore he was one. You call him an assassin. The law calls him one. I tell him that he is a murderer from the moment he says he did commit "so-called" murder. But his testimony is, that for two weeks after he (not God) formed the conception, he knelt every night at the feet of God (with whom he says he is now very well satisfied) and prayed to have him work a miracle in order to find out whether, after all, this was not an inspiration of the devil, and as He worked no miracle he concluded that it was an inspiration from God. This man professes to believe that the God who spoke to Moses and the Christ who spoke to Paul in order to replace Judas, who had been false to his trust, inspired this murder. He tells you on his own oath that he meditated the means, that he contrived the vindication, that he prepared the papers which were to vindicate him before God and man, that he revised his book (his inspired book) and altered it. He purchased a pistol, practised by the river side. Who was it that was practising—the Deity or the prisoner? Who fired twenty times in order to accustom himself to the noise of the report of the pistol, to the end that it should not stun him when he murdered the President?

As to his being restrained from the murder by the presence of Mrs. Garfield on one occasion, and that of the two boys on another occasion, was as false as anything else he had said. He had been restrained by nothing but cowardice. He knew that if he had murdered the President in his wife's

presence, no military force could have prevented the people who were around tearing him limb from limb. And on the occasion when the children were present, they had come surrounded by their friends and domestics. Those boys, though not strong, would on such an occasion, have felt that their arms carried the power of the Almighty in the defense of their murdered father. After Guiteau fired the bullet he turned to run. Run to jail? He was careful in the very last moment, of his own safety. He held aloft his letter to General Sherman, asking him to summon instantly to his protection, that military force which had not been present to protect the murdered President. This man had appealed to the Court to give him every right, every constitutional right, freedom of speech, perfect impartiality (which would consist in making all decisions in his favor). He had been dictating to the Judge the charge which he proposed the Judge should make to the jury. He had shown himself averse to sitting in the dock, which was a disparagement to a lawyer, a theologian, a politician, a man of God, a man of prayer, a patriot, a man whose name is to go on through all ages.

Guiteau. I am the only man who has not been benefited by the new administration. There is Porter, with his $10,000 fee. He has been benefited, not me. This is a good time to make that point. Everybody else has been benefited by this move but me.

Mr. Porter. His benefit will come when the law has been fully executed in his case; but has he not told you again and again that he was to be benefited, first in the advertisement and sale of his book and second in the reward which he was to receive after elevating Mr. Arthur to the Presidency?

The Prisoner. I have not got any reward from him and do not expect any. I would not take a Cabinet commission today.

Mr. Porter. Counsel for the defense would not claim that that there could be an acquittal. Why not? Because it would shock all Christendom. So all the struggle of counsel for the defense had been to lead one of the twelve jurors to differ with his fellows. Mr. Reed had made it very evi-

dent that he thought there would be one, or perhaps two, of the jurors who would disagree with the others and Mr. Scoville had indicated pretty plainly that he thought so too. I do not and have not thought so from the beginning. I know nothing of the antecedents of any of the jurors and have heard nothing that would lead me to suppose that any of them would not find a verdict according to the evidence. But when these attempts are made so persistently and so constantly, when they are circulated by telegraph, when they appear in the newspapers and are the subject of indignant comment throughout the country, I cannot ignore them, especially when I see the last seven days of argument addressed to the same point, of procuring a division of the jury. If there should be such a division it would be very unfortunate. I think it would be unfortunate for any interest that I can conceive of as an honest man. How would the case stand if there were such a division of the jury? It would stand about thus:—Here is a man who swears he is guilty, and here is a juror who says: "I will swear that he is not." The prisoner calls it an assasination over his own signature, and the juror says it is no assassination. Oath to oath opposed. Prisoner, "guilty." Juror, "not guilty." Prisoner, "sane," Juror, "insane." The only consequence of that disagreement, gentlemen, would be (under the charge which the Judge will deliver to you) to call the attention not only of this country, but of mankind, to the only human being who is ready to stand by and shield the cowardly assassin of the President of the United States. But what would be accomplished by it? Is it supposed that this Government is not strong enough to press the case to a conclusion? It would defeat the purpose of this particular trial and it would compel twelve other jurors to be prisoners in their turn as you have been in yours; to be held away from their families and business, as you have been held away from yours, and to have so much cut out of their lives as so much has been cut out of yours, and all this when the prisoner swears he is guilty. I shall demonstrate that, unless this prisoner is

a liar unworthy of belief, he is guilty. The theory of this defense, as presented by Mr. Scoville, was plausible and false. He chose to embark this entire defense on a craft which the prisoner with his own hands has scuttled. This case stands on the single question whether on the 2d of July, 1881, the assassin believed that he was commanded by God to murder the President—

The Prisoner. That is all there is to it and that is what the jury has to pass on.

Mr. Porter. You perceive it. He foresaw from the beginning of this trial the weakness of his counsel's theory, and if his counsel had had the brains of the prisoner they would have foreseen it. And they would have concentrated their whole power upon it. Let me suggest to you, gentlemen, that the office of a juror is not a light office. Some one has said (I think it originated with Bacon) that when you come to the Anglo-Saxon race and its form of government, the ultimate decision of all rights and all liberties is to be found in the jury box. In yonder Capitol districts are represented, and States are represented, but not the American people. There are in our Government only two representatives of the American people. The one is the head of the government, the President of the United States; the other is the jury of twelve men to whom, in the last resort, all rights, whether they be of life, liberty or property, come for protection. For that purpose and under the operation of our law, you twelve men stand to-day as the representatives of the American people. But, gentlemen, there are certain questions which rise so immeasurably above minor issues, that upon them great masses are universally agreed. This is one of those cases. It has arrested attention because it was a crime committed not in the secrecy of night, but under the broad canopy of heaven and in the broad light of day; because it was a crime committed not merely against the murdered victim, but against household relations, family relations, State relations, public relations, the existence and duration of the Government itself—so far, at least, as a

change of political administration can be wrought out by assassination. I deny that any man can ignore the fact, that just as all other men loathe and abhor such crimes, so should you. This prisoner has been blatant in claiming from day to day that the people of this country were on his side: that he was receiving letters and telegrams and contributions expressing sympathy with him; that the newspapers which he professed to be reading (while he was looking over the top of them and watching the progress of the case) were containing expressions in his favor. While all this has been going on, you might very well have wondered how it was that neither of the counsel for the defense dared to refer to the general judgment of the City of Washington, of the District of Columbia, of the United States, or of manhood. For they had yet to see the first newspaper published in America that ventured to defend this criminal. I have seen occasional articles before the trial, and one or two since, doubting whether he might not have been insane. but all of them denouncing the Court, the administration of justice—everything and everybody—because this man was not tried and hung.

January 24.

Mr. Porter. That this man has grown worse every year that he has lived, we all see and know. That he was a disobedient child; that he was lawless and ungrateful to his father; that he was an unkind brother; that he stung every man who was a benefactor to his youth; that he had inordinate desire for unholy notoriety; that his vanity was boundless, and that his malice was still more unbounded, we all know. All this he was in early life. And I shall now call your attention to some of the evidences that he was growing worse and worse, until his career culminated in cold-blodded assassination. His life was consistent and harmonious from the beginning. There is a self-propagating property in sin and vice and crime, until the man becomes (not by disease, but by culture) what Dr. Spitzka calls a moral monstrosity.

Guiteau. **You are a wine bibber.**

Mr. Porter. This Christian gentleman, this moral gentleman, this praying gentleman, who prays every morning before he eats (but nobody hears) makes the suggestion that I am a wine bibber. Perhaps I am. That reminds me of a distich which I heard in a temperance meeting many years ago on a church deacon, who used one of the vaults of the church for storing his wine:

There's a spirit above, 'tis the spirit divine;
There's a spirit below, 'tis the spirit of wine;
There's a spirit above, 'tis the spirit of love;
There's a spirit below, 'tis the spirit of woe.

It is for you, gentlemen, to judge whether it was the spirit of love or the spirit of wine that led to the murder of your President and mine. Who was it that killed President Garfield?

Guiteau. The Doctors. The Lord allowed them to confirm my act. They were the immediate cause of his death.

Mr. Porter. I am afraid the prisoner has not the latest intelligence from Heaven, for he said that the inspiration left him an hour after he killed the President. Who killed Garfield? The prisoner says in his testimony: "Secretary Blaine is responsible for the murder of President Garfield." Who else is responsible for the death of Garfield? Mrs. Garfield: because the prisoner swears that when he saw that honored lady leaning on her husband's arm, her presence on that occasion saved his life, and so if she had been with him on the 2d of July, the prisoner would not have shot President Garfield. Who else killed Garfield? John H. Noyes, says the prisoner. He killed Garfield. He from whom the prisoner stole his lecture on "The Second Advent" and on "The Apostle Paul." Who else killed Garfield? The prisoner's father. That father whom he struck from behind when he was eighteen years of age. Who else killed Garfield? The mother of this prisoner, who was guilty of the inordinate atrocity of having a temporary attack of erysipelas just before he was born, and leaving him an inheritance of con-

genital monstrosity. Who else killed Garfield? This prisoner's drunken and dissolute uncle Abraham who, although he was never insane himself, transmitted insanity to the prisoner, though he was not his father, nor his mother, nor his grandfather, nor his grandmother. Who else killed Garfield? The prisoner's cousin, Abby Maynard. Who else killed Garfield? The Chicago Convention which nominated him for the Presidency, inspired, according to the prisoner's statement. He says: "His nomination was an act of God, and if he had not been nominated and elected I could not have killed him." The prisoner claims that he was appointed by God to kill him—he, with his swindling record—he, a liar from the beginning—he, who struck his father; who lifted an axe against his sister, who struck his brother—he was commissioned to correct the act of the Convention and of the people by murdering the President. These are the defenses put forward by this praying prisoner and by his praying counsel, in order to divert your attention from the fact that the man who killed Garfield sits there, and although Garfield is dead, the prisoner speaks and has spoken on the witness stand those words which prove him to be not only the assassin, but the meditating, deliberate, sane and responsible assassin of the President. But that is not enough. The press killed Garfield. The press is solemnly indicted by the murderer and his associate counsel; indicted without the formality of the grand jury; accused by the oath of a murderer; found guilty by the murderer; charged with responsibility by the murderer. But fortunately he no longer holds the "bulldog" pistol in his hands, and the press is only to be convicted of the murder of Garfield by the bad tongue of a murderous liar. This man slaughtered Garfield as he would have slaughtered a calf that he wanted to eat. And having disposed of him in that way, in comes his counsel and charges with the crime, those who occupy too lofty a position to notice the vipers that said it, and who would have degraded the dignity of their office by noticing it. One of them is a distinguished American Senator, who at this moment

(except that he was too proud and too lofty to accept the office, would be sitting as the Chief Justice of the Supreme Court of the United States); the son of a great and honored American Jurist; a man who still young in years, has commanded more of the attention, at home and abroad, of the admirers of intellectual greatness, of the loftiest eloquence, and of the greatest statesmanship than any man perhaps even of his time; a bitter partisan; a man honest in all that he undertakes; a man faithful to his friends, faithful to his convictions, even though they involve sacrifice; a man who was capable of doing what few men are—resigning the leadership of the American Senate, and to do it at the peril of his own political destruction; a man of unstained integrity, of a courage and fearlessness and manliness which made this withdrawal a matter of regret even to his political adversaries. Such a man is to-day arraigned before an American jury, and arrainged not by the criminal, but by the criminal's defender as responsible for the murder of Garfield.[35]

Another of those whom he arraigned is a man more honored in the Confederate States than any American, save their own cherished leader, General Lee; a man who is honored in the Northern states for services rendered—first in war and afterward in reconciling the difficulties which grew out of the war; a man whose life has been without dishonor and reproach; a man elevated to conspicuous positions, the successor of Washington and Jefferson, Jackson and Lincoln; one who, after he left that place was welcomed in every European and Oriental land as one of the noblest men and purest personal characters to be named in the history of the nineteenth century. That man is arraigned by the lawyer of Guiteau as responsible for the murder of General Garfield.[36] More than that, we have the President of the United States, the successor of Garfield and Hayes and Lincoln and Jackson and Jefferson and Adams and Washington, elevated to that position not by an assassin, but by the voice of his countrymen. And when this creature

[35] Senator Conkling, ante p. 22.
[36] General Grant.

says: "I made Arthur President;" he forgets that General Arthur was made President by the voice of his countrymen; by that very voice which made Garfield President. He was made President under the constitution and the laws. This man has said that Garfield might have died from any other cause; that he might have trod on an orange peel, and received an injury which might have caused his death, or that he might have trod upon a rattlesnake whose fangs might have pierced his heel. Was it the orange peel or the rattlesnake that made Arthur President? Both because the prisoner has shown himself all his life as slippery as the orange peel and as venomous as the rattlesnake. But in one respect meaner than the rattlesnake, for Providence has provided in respect of that reptile that there shall be a warning at one end, but the venom at the other. This was a rattlesnake without the rattle, but not without the fangs, and when he tells you that he made General Arthur President of the United States, he made him President in just the same sense in which the rattlesnake might have done it by introducing into President Garfield's veins that venom which in eighty days would bring him down to the grave.

In one of his waking hours on the 11th of July, the President asked Mrs. Susan Edson where Guiteau was. This was while he expected to recover. He then remarked that he supposed people would come to him some day with a petition to pardon that man; and he wondered what he should do in a personal matter of life and death. Mrs. Edson told him that she should think he would do nothing at all and that he surely could not pardon such a man, and the President said: "No, I do not suppose I can." And yet Mr. Charles Reed, to whom the American Bar is indebted for the introduction to its ranks of the prisoner Guiteau, undertook to say that the President regarded him as an irresponsible man.

As to Mr. Reed's illustration as to Christ casting out devils and healing lunatics: The Saviour made a distinction between the sick, the lunatic and those that were possessed of devils. The claim here is, that this man was so enormously

wicked as to be, in the language of Dr. Spitzka, a moral monstrosity. He represents the class of which the Saviour spoke, not lunatics, but possessed of the devil. A man who was possessed by the devil came to the Saviour and prayed to be delivered. The Saviour granted his prayer and commanded the devil to say who he was. "My name," said the devil, "is Legion." And he prayed to be allowed to go into a herd of swine, because even devils go through a form of prayer. The Saviour consented. What became of the swine after Legion had entered the herd? "They rushed down a steep place into the sea and were choked." Whether the devil that possesses this man is or is not to be choked by the law you are to determine. But the destination of diabolism such as his was thought by the Saviour to be fitting for the swine, and the ultimate destination even of the swine was to be choked in the water.

Gentlemen, you have been told you were twelve kings and emperors. Does such fulsome adulation commend itself to your taste? If I used such language I trust that you would scorn me. You are no more kings, gentlemen, than Messrs. Scoville and Reed are kings. The purpose was to lead you to suppose that you can override the judge and the law; that you are at liberty to override the instructions of the Court, and to find your verdict, or refuse to find it, on the ground of speculative doubts not warranted by the evidence, but based on your own view of the prisoner, or on evidence which has not been submitted.

In the prisoner's desire for notoriety he has made himself illustrious by having his hand stained by illustrious blood. That man undertook to award immortality to the jury or immortality to the Judge, and he had through his counsel told them that their names would go down blackened, unless they violated their oaths, and that his (Mr. Porter's) name was to go down blackened unless he came to the rescue of the prisoner. He tells you that even the President and the great men of the country must take heed; that even God Almighty must take heed how he acts towards him. He tells you that, at all

events, he is satisfied so far with what the Almighty has done, and that he expects before the trial is done, that if it is necessary the Almighty will take one of you, gentlemen, or will take me, or will take each one of us, rather than that he shall be struck down. The drama is well played, gentlemen. This man is an actor. While in jail he has borne his natural part, but here he has been constantly on the stage posing for you and carrying out the suggestions of his counsel. Although he has sworn to you repeatedly that he was prepared to meet his God, there is not a soul in this vast assemblage who shrinks with such abject cowardice from confronting the Deity.

What household would be safe, what church would protect its worshipers, if this man were to escape on the plea of irresponsibility? Is it true that any man who has had an insane cousin, an insane uncle, an insane aunt, or an insane ancestor, and who is not himself insane, but knows perfectly that murder is legally and morally wrong, is to escape punishment? May he stab, or shoot, or waylay, or murder in any form by day or by night, and then claim in his vindication, not that he is insane himself, but that somebody else was? If so what is human life worth? Nay, more, if it were true that every insane man, no matter in what degree, no matter whether from melancholia, or from any of those casual or occasional aberrations of mind, is at liberty to commit burglary, to fire your dwelling house, to set the City of Washington on fire, when the frost shall stiffen the water, and when fire is destruction, to ravish your daughters, what security is there? That is the license for which this brother-in-law of Guiteau contends—namely, that the law is intended only for rational men—and that all of these crimes which I have mentioned may be committed by a license, not from the law, but from one of twelve emperors or kings in defiance of the law and of the instructions from the Court. Nay, more. The insane of this country (I mean the undoubted insane, who are inmates of lunatic asylums) are to learn from the verdict in this case, if the theory of the defense shall be sustained, that each of them is at liberty to murder the keeper who restrains him;

that they are all at liberty to confederate to open the gates of the asylums and to go out, knife and torch in hand, and spread ruin and conflagration in every direction, and although the law forbids it, an American jury can be found that will sanction the act.

More than that, any man who has insanity in any degree shall be at liberty to murder any other insane man. In the mercy of a good and kind Providence none of us has, as yet, been put in a lunatic asylum, yet there is not a human being in this vast assemblage who is not exposed to this calamity. And then every one of the five hundred or thousand lunatics in the asylum will be at liberty to take our lives. If such were the law, gentlemen, the most benign institution in the country—the institution of asylums for the insane—must be abandoned. Let the lunatics understand that the law has no hold upon them and that they can commit murder with impunity, and no order of General Sherman, no troops that may be sent to guard an asylum can save the lives of inmates or keepers. And hence it is (as I am glad to learn), that while this case may well produce horror outside of lunatic asylums, it produces more horror inside of them. I believe that if a jury could be empanelled in any lunatic asylum in this country, they would say of this man not only that they would be endangered by his presence, but that he is perfectly sane. There is one other witness who better than all else ought to know whether he was sane or insane. That is the woman who loved him.

Grant, for the purpose of the argument—what not one soul of you believes—that his father was insane. His father did not assassinate Garfield. Grant, if you please, that his uncle Abraham was insane. His Uncle Abraham is not on trial. He did not murder President Garfield. Grant the same of each and all of these relatives, none of them murdered the President. I aver (what this proof indisputably established) that he never was insane, and certainly not on the 2d of July. On that point the principal claim by the prisoner and his counsel is the atrocity of this particular act. I do not deny his claim of

being the most cold-blooded and savage murderer of the last 6,000 years. But he is not alone, as he will find when he comes to those realms where murderers are consigned. The first born of the human race murdered the second born, and the blood of the second born called from the ground. Though the corpse was mute the blood spoke and the murderer was condemned to live (then a more terrible punishment than death) with a mark upon his brow. Murder has existed in all ages. Four thousand years ago there were inscribed on tables of stone the command to all people: "Thou shalt not kill." But Guiteau says that life is of small consideration. He says in one of his letters of consolation to the widow: "Life is but a fleeting dream. His death might have happened at any time." As he said, Mr. Garfield might have trod on an orange peel or trod on a rattlesnake. But the Lawgiver of the universe entertained different views on the value of human life when he said: "Whoso sheddeth man's blood by man shall his blood be shed."

Guiteau. That was said 4,000 years ago; that is old.

Mr. Porter. And that man in the dock tells you that the same God that placed that value on human life, placed no value on the life of James A. Garfield, and that as to that life it was but of small value—it was "a fleeting dream." We have had the gospel of Guiteau and he thinks that this jury will endorse his gospel. I do not deny that there are hereditary tendencies to insanity. There is one order of insanity called by this prisoner Abrahamic, called by him at other times temporary mania, and called by Dr. Spitzka moral insanity. That moral insanity, according to Dr. Barker, consists in wickedness, and is inherited, not from a natural parent, but from another source. Christ speaking to the Scribes and Pharisees, said: "Ye who claim to be of the seed of Abraham prove it by doing acts of Abraham; but ye are the children of your father the devil, who was a murderer from the beginning." That is the insanity which this man has inherited. The man is a liar as well as an assassin and he was instigated not by the Almighty, but by the devil.

Judge Porter reviewed the prisoner's life of crime, in which he included adultery; he referred to his life in Washington, living at first-class boarding-houses at the expense of the keepers of the house; punctual at breakfast, at dinner and at tea; careful to take baths, punctual at night, sleeping well, eating heartily, rising early, and spending the day at Lafayette Square, or in making preparations to murder the President when he should have a favorable opportunity. Was this temporary mania, Abrahamic mania, or disease of the brain, which resulted in murder for the benefit of the stalwarts of the Republican party? Gentlemen, if I went no further, do you believe that this man's brain was diseased? And did the disease come and go according to whether President Garfield went out alone, or went out with his wife, or went out with his children, or went to the Soldiers' Home, or went to the railroad depot? Do you believe that the right remedy for a disease of the brain is to make six weeks' preparation for an assassination, and that shooting another man through the spine is a cure for the disease? That is the case as the prisoner makes it out.

And his own sister, the only one who has stuck by him faithfully and honestly, tells you that the first time she thought him insane was when he was thirty-five years of age, and had no thought before that he was not in his right mind.

January 25.

Dr. North came here to swear this case through by fixing upon his benefactor, Luther W. Guiteau, the guilt of this murder in transmitting his own blood to his son. If this man were innocent now, he was guilty then, for he was animated by the spirit of murder when he struck his father, taking him at a disadvantage and fighting him in the spirit of a devil. In his turbulent passion and egotism and wrath and hate of all mankind he turned, in his spirit of selfishness, his hand upon his honored father, and provoked that father to a fight from which he retreated with the ignominy of the coward, as—like a coward—he shot the President in the back. The prisoner's brother, when the prisoner was forty years of

age, when he had murdered Garfield, and when Garfield was dead, from the circumstances and from his antecedent knowledge of the prisoner, said that the prisoner was sane and responsible. All that had changed that opinion was the acting of the prisoner himself and the production of a letter from the father which he regarded as evidence of insanity, but which I regard as evidence of depravity. The jury would recollect that this was a witness who had stood by the prisoner with the fidelity of a brother,—who, though wronged, had come here and was ready to contribute from his means, from his energy, from his exertion, from all that he could to save this man's life, and yet he had been compelled to utter this truth before the jury. I believe John W. Guiteau to be an honest man; feeling naturally the bias which inclines one to save a brother's life and to save his father's name from infamy.

The prisoner excused his conduct because he had been imitating the course of Jesus Christ and St. Paul, in going about from town to town and from city to city, traveling from State to State, swindling women as well as inn-keepers, and then said that he had paid the debt because he had acknowledged it, and that it should be charged over to the Lord. Instead of Paul swindling and defrauding while engaged in the mission of his divine Master, he worked at his trade as a tent maker and paid his way. He swindled no Jew, he passed no mock gold watches off as real gold ones. He lived as we are told in his own hired house, and while there were so many opposed to Paul no living being except the assassin of Garfield has charged that he could not pay his rent.

Do you doubt that when under your verdict the sentence of the law shall come to be pronounced we shall hear again and again the same language of menace and of hate, and that if he had the pistol with which he aimed at Garfield, in his hand, he would if he dared, send the cartridge home? If he had loved his neighbor, Garfield, as he loved himself—what think you? Would it have been his opinion that this inspiration was of the devil or of God? If

he had loved his neighbor as himself how many of his swindled victims would there be in this broad land? Do you believe that He who knows all things really selected the prisoner as the successor of Paul and the junior member of the firm of Jesus Christ & Co., to write a sequel to the Bible and to illustrate the Golden Rule by lying in wait to murder?

There is an insulting reflection on one of our witnesses as a Jew. It is no dishonor to any man to be the countryman of the Redeemer of mankind, or to be of the seed of those prophets whose names have come down to us in honor and whom we all agree in holding as the messengers of God. To be one of that Hebrew lineage is no disgrace. The one who sings from week to week in the church the songs of David of Israel, the one who consults the wisdom of Solomon, the man who honors the name of Saul, the one who professes to reverence—as this man does—Abraham, the progenitor of Christianity.

Dr. Kiernan declared that one person out of every five is more or less insane. Whether I am one of these unfortunate of five I do not know. I do not think however, that Dr. Kiernan would have any difficulty in sending me to a lunatic asylum for believing that this man and not Mr. Corkhill killed the President. I presume that Dr. Kiernan shares the feeling of the counsel for the defense that the man who killed the President is the man who is now personating the prisoner, and that I and Mr. Davidge stood by him with our hands upon our hip pockets ready to shield him after he had shot the President in the back. I wonder whether if Lucifer happened to be on trial Dr. Spitzka would say of him that he was a moral imbecile, a moral monstrosity. When Satan fell, if we may believe the book of inspiration, he fell from where? From the Empyrean heights, and he sank into the depths from which come those temptations that lead men to crime, and doom them to punishment here and hereafter. But there was a change in Satan. Dr. Spitzka thinks there never was a change in this man. He was a moral imbecile—that is, wicked from the beginning.

The world had lived since the year of the French Revolution in ignorance of the fact that the beautiful Charlotte Corday was insane. It was left to Mr. Reed to announce that fact. She cannot turn in her grave to belie it, but there are some of us who know something of the history of that wonderful woman's true patriotism which led to an assassination that was justified if ever an assassination was justified. She was no sneaking coward. She left the house in which she was reared to deliver France, to stay the hand of revolutionary slaughter; to lay her own head beneath the guillotine in order to save the effusion of blood. She believed it to be her duty to the France she loved, and she made her way with deliberate preparation, sane in mind and devoted in purpose, ready to die that others might live, and she succeeded in finding her way to the man who had in his right hand the lives of millions of Frenchmen, and who by jotting a mark of blood opposite the name could hurry men into a dismal, dark dungeon, from which there was no escape except through the guillotine. She devoted herself to the work not after providing for her own safety; not with the idea of securing rewards from others. This prisoner and his counsel made the discovery at the Corcoran Art Gallery that Charlotte Corday, who will live immortal in history as one ready to give her own life for her country, was insane and would place this murderer by the side of that girl who gave her life that others might live. When she was called to execution she rose from her knees with a crucifix clasped to her breast. While I have a strong conviction that Wilkes Booth was a perfectly sane man, still there were in his case circumstances that tended to mitigate in some degree the horror we feel at his crime. He was a man wholly devoted to the cause which had failed; who looked and rightly looked on Abraham Lincoln—his constancy, his wisdom, his devotion, his patriotism—as the bar which had prevented the Southern States from achieving their independence. Booth had been a play actor. He had been among many temptations. The hate of that bloody war had not passed away. He was eaten up by the love of notoriety which

has led to so many crimes. He had an idea of patriotism and he became infatuated—not insanely, but wildly—with the idea that he would render a service to that portion of the country with which he had cast his fortune if he did the act. Of course neither you nor I justify the act. It was justified neither by the Confederate army nor by the people of the Confederate States. It was justified by no man North or South; but I cannot say that I have not now some degree of commiseration for the brilliant life so unfortunately ended and bound to eternal infamy by an act which I readily believe was in some degree at least, influenced by a feeling of misguided patriotism.

The Prisoner. That is a lie and you know it. Booth killed Lincoln from revenge and I shot Garfield from patriotism. I shot my man in broad daylight.

But what is this case? Are there in it any of the mitigating circumstances that attach even to the memory of the murderer of Lincoln? No. True, Booth shot from behind, but he felt that he was putting his life in peril for he was in a crowded audience, and yet with the instincts of manhood and believing or feeling that he might be justified by his countrymen, he leaped upon the stage, mounted his horse and rode for life or for death—he rode to death—and within the blazing flames of the building in which he was penned, as God pens murderers, he still presented the lion front of a brave man, and although crippled in body he died like a stag at bay. But this man, this coward, this disappointed office seeker, this malignant, diabolical, crafty, calculating, cold-blooded murderer, providing for death to his victim and for safety to himself—would you compare him with Wilkes Booth? This man has told you of the preparations he made for murder. He had been making them for years. It was a contingency which he had in view years before, while he was in New York in desperate circumstances. He read the popular literature of the day, and nursed in himself that very love of notoriety which he commended in Wilkes Booth. He had contemplated such a murder as one of his many brilliant

conceptions. My attention has been called to a dialogue in one of Ouida's novels, which illustrates the topic I am discussing. The famous John Wilkes had been mentioned as the ugliest man in Europe, and one of the parties to the dialogue said: "Let me be the ugliest man in Europe rather than to remain in mediocrity. There is not a hair breadth's difference between notoriety and fame. Let me be celebrated for something. If you cannot leap into a pit like Curtius, pop yourself into a volcano. Folly is immortal just as much as heroism. The world talks of you and that is all you want. If I could not be Alexander, I would be Diogenes. If I were not a great hero I would be a most ingenious murderer." This love of notoriety has pursued this man from the beginning. He never earned an honest penny.

This man has been all his life craving money. You cannot find two letters of his in this book in which mention is not made of money. His clamors from the dock have been all money! money! money! According to him the witnesses are swearing for money, the Government is prosecuting for money. He says: "I would not have killed President Garfield as I feel now, for a million dollars." You have heard that over, over and over again until nauseation. He is "The Honorable Charles J. Guiteau, the Little Giant of the West." He was always glorifying himself. He has been endeavoring to persuade you that Providence wrought miracles in his favor, and the only reason why, when the Stonington and Narragansett came in collision, Providence saved the lives of those on board was because this traveling book-peddler and lecturer was on board. That he thinks was one of the cases of special Providence. The leading spirit of the man has been —first, greed of money and the greed of reputation. When Horace Greeley was a candidate for the Presidency this man was at his heels, an applicant for the mission to Chili. If Mr. Greeley had been elected and the Chilian mission had been refused to this man he would have got a Bulldog pistol and sent a cartridge into the back of Horace Greeley.

Every one of the thirteen experts has sworn on personal

examination, that the prisoner never was insane, and three of them were witnesses who had come under subpœna from the defense, believing from public rumor that he was insane. They examined him, came to the conclusion that he was sane, and notified the counsel for the defense that they should so swear. Men of European reputation all swore that there was no disease of the brain in this man, no insanity, but that he was as sane as any of us.

Mr. Porter quoted from some scenes in "Othello," between Iago and Roderigo, in order to show that the prisoner had found in Shakespeare the idea of softening down the name of murder into "removal."

He read one of the prisoner's exclamations: "I repudiate the theory of Mr. Scoville. I am not insane now, and I never pretended that I was." Almost every sentence that was uttered by Mr. Porter was retorted to by the prisoner, until finally he closed his argument as follows: Gentlemen, the time has come when I must close. The Government has presented the case before you, and we have endeavored to discharge our duty to the best of our abilities. His Honor has endeavored to discharge his. I know that you will be faithful to your oaths and discharge yours. So discharge it that, by your actions at least, political assassination shall find no sanction to make it a precedent hereafter. He who has ordained that human life shall be shielded by human law, from human crime, presides over your deliberations, and the verdict which shall be given or withheld to-day will be recorded where we all have to appear. I trust that that verdict will be prompt, that it will represent the majesty of the law, your integrity and the honor of the country; and that this trial which has so deeply interested all the nations of the earth may result in a warning—to reach all lands—that political murder shall not be used as a means of promoting party ends or political revolutions. I trust also that the time shall come in consequence of the attention that shall be called to the considerations growing out of this trial, when by an international arrangement between the various governments the law shall

be so strengthened that political assassins shall find no refuge on the face of the earth.

THE CHARGE TO THE JURY.

JUDGE COX (after telling the jury to disregard the statements of the prisoner that public opinion was with him and instructing them as to the elements of murder, the burden of proof and the presumption of innocence). The defense of insanity has been so abused as to be brought into great discredit. It has been the last resort in cases of unquestionable guilt, and has been the excuse to juries for acquittal, when their own and the public sympathy have been with the accused, and especially when the provocation to homicide has excused it according to public sentiment, but not according to law. For these reasons, it is viewed with suspicion and disfavor, whenever public sentiment is hostile to the accused. Nevertheless, if insanity be established to the degree that has been already, in part, and will hereafter further be explained, it is a perfect defense to an indictment for murder, and must be allowed full weight.

Now, it is first to be observed that we are not troubled in this case with any question about what may be called *total* insanity, such as raving mania, or absolute imbecility, in which all exercise of reason is wanting, and there is no recognition of persons or things, or their relations.

But there is a debatable border-line between the sane and the insane, and there is often great difficulty in determining on which side of it a party is to be placed. There are cases in which a man's mental faculties generaly seem to be in full vigor, but on some one subject he seems to be deranged. He is possessed, perhaps with a belief which everyone recognizes as absurd, which he has not reasoned himself into, and cannot be reasoned out of, which we call an *insane delusion*, or he has, in addition, some morbid propensity, seemingly in harsh discord with the rest of his intellectual and moral nature.

These are cases of what, for want of a better form, is called partial insanity. Sometimes its existence, and at other times its limits, are doubtful and undefinable. And it is in these cases that the difficulty arises of determining whether the patient has passed the line of moral or legal accountability for his actions.

You must bear in mind that a man does not become irresponsible by the mere fact of being partially insane. Such a man does not take leave of his passions by becoming insane, and may retain as much control over them as in health. He may commit offenses, too, with which his infirmity has nothing to do. He may be sane as to his crime, understand its nature, and be governed by the same motives in regard to it as other people; while on some other subject, having no relation to it whatever, he may be subject to some delusion. In a reported case, a defendant was convicted of cheating by false pretences, but was not saved from punishment by his insane

delusion that he was the lawful son of a well-known prince. The first thing, therefore, to be impressed upon you is, that wherever this partial insanity is relied on as a defense, it must appear that the crime charged was the product of the delusion, or other morbid condition, and connected with it as effect with cause, and not the result of sane reasoning or natural motives, which the party may be capable of, notwithstanding his circumscribed disorder. The importance of this will be appreciated by you further on.

But, assuming that the infirmity of mind has had a direct influence in the production of crime, the difficulty is to fix the degree and character of the disorder which, in such case, will create irresponsibility in law. The outgivings of the judicial mind on this subject have not always been entirely satisfactory or in harmony with the conclusions of medical science. Courts have, in former times, undertaken to lay down a law of insanity without reference to and in ignorance of the medical aspects of the subject, when it could only be properly dealt with through a concurrent and harmonious treatment by the two sciences of law and medicine. They have, therefore, adopted and again discarded one theory after another in the effort to find some common ground where a due regard for the security of society and humanity for the afflicted may meet. It will be my effort to give you the results most commonly accepted by the courts.

It may be well to say a word as to the evidence by which courts and juries are guided in this difficult and delicate inquiry.

That subtle essence which we call "mind" defies, of course, ocular inspection. It can only be known by its outward manifestations, and they are found in the language and conduct of the man. By these his thoughts and emotions are read, and according as they conform to the practice of people of sound mind, who form the large majority of mankind, or contrast harshly with it, we form our judgment as to his soundness of mind. For this reason evidence is admissible to show conduct and language at different times and on different ocasions, which indicate to the general mind some morbid condition of the intellectual powers; and the more extended the view of the person's life the safer is the judgment formed of him. Everything relating to his physical and mental history is relevant, because any conclusion as to his sanity must often rest upon a large number of facts. As a part of the language and conduct, letters spontaneously written afford one of the best indications of mental condition.

Evidence as to insanity in the parents and immediate relatives is also pertinent. It is never allowed to infer insanity in the accused from the mere fact of its existence in the ancestors. But when testimony is given directly tending to prove insane conduct on the part of the accused, this kind of proof is admissible as corroborative of the other. And therefore it is that the defense have been allowed to introduce evidence to you covering the whole life of the accused, and reaching to his family antecedents.

In a case so full of detail as this I shall deem it my duty to you to assist you in weighing the evidence by calling your attention to particular parts of it. But I wish you distinctly to understand that it is your province, and not mine, to decide upon the facts; and if I, at any time, seem to express or intimate an opinion on them, which I do not design to do, it will not be binding on you, but you must draw your own conclusions from the evidence.

The instructions that have been given you import, in substance, that the true test of criminal responsibility, where the defense of insanity is interposed, is whether the accused had sufficient use of his reason to understand the nature of the act with which he is charged, and to understand that it was wrong for him to commit it; that if this was the fact he is criminally responsible for it, whatever peculiarities may be shown about him in other respects; whereas, if his reason was so defective, in consequence of mental disorder, generally supposed to be caused by brain disease, that he could not understand what he was doing, or that what he was doing was wrong, he ought to be treated as an irresponsible person.

Now, as the law assumes every one at the outset to be sane and responsible, the question is, what is there in this case to show the contrary as to this defendant?

A jury is not warranted in inferring that a man is insane from the mere fact of his committing a crime, or from the enormity of the crime, or from the *mere apparent* absence of adequate motive for it, for the law assumes that there is a bad motive—that it is prompted by malice—if nothing else appears.

Perhaps the easiest way for you to examine into this subject is, *first*, to satisfy yourselves about the condition of the prisoner's mind for a considerable period of time before any conception of the assassination entered it, and at the present time, and then to consider what evidence exists as to a different condition at the time of the act charged.

I shall not spend any time on the first question, because to examine it at all would require a review of evidence relating to over 20 years of the defendant's life, and this has been so exhaustively discussed by counsel that anything I could say would be a wearisome repetition. Suffice it to say, that, on one side, this evidence is supposed to show a chronic condition of insanity for many years before the assassination; and, on the other, to show an exceptionally quick intellect and decided power of discrimination.

You must draw your conclusions from the evidence.

Was his ordinary, permanent, chronic condition of mind such, in consequence of disease, that he was unable to understand the nature of his actions, or to distinguish between right and wrong in his conduct? Was he subject to insane delusions that destroyed his power of so distinguishing? And did this continue down to and embrace the act for which he is tried? If so, he was simply an irresponsible lunatic.

Or, on the other hand, had he the ordinary intelligence of sane

people, so that he could distinguish between right and wrong, as to his own actions? If another person had committed the assassination, would he have appreciated the wickedness of it? If he had had no special access of insanity impelling him to it, as he claims was the case, would he have understood the character of such an act and its wrongfulness if another person had suggested it to him? If you can answer these questions in your own minds it may aid you towards a conclusion as to the normal or ordinary condition of the prisoner's mind before he thought of this act; and if you are satisfied that his chronic or permanent condition was that of sanity, at least so far that he knew the character of his own actions, and whether they were right or wrong, and was not under any permanent insane delusions which destroyed his power of discriminating between right and wrong as to them, then the only inquiry remaining is whether there was any special insanity connected with this crime; and what I shall further say will be on the assumption that you find his general condition to have been that of sanity to the extent I have mentioned.

On this assumption it will be seen that the reliance of the defense is on the existence of an insane delusion in the prisoner's mind which so perverted his reason as to incapacitate him from perceiving the difference between right and wrong as to this particular act.[37]

The subject of insane delusions, which plays an important part in this case demands careful consideration. We find it treated, to a limited extent, in judicial decisions, but learn more about it from works on medical jurisprudence and expert testimony. Sane people are said sometimes to have delusions proceeding from temporary disorder and deception of the senses, and they entertain extreme opinions which are founded upon insufficient evidence, or result from ignorance, or they are speculations on matters beyond the scope of human knowledge; but they are always susceptible of being corrected and removed by evidence and argument.

But the *insane delusion*, according to all testimony, seems to be an unreasoning and incorrigible belief in the existence of facts which are either impossible absolutely, or, at least, impossible under the circumstances of the individual. A man, with no reason for it, believes that another is attempting his life, or that he himself is the owner of untold wealth, or that he has invented something which will revolutionize the world, or that he is president of the United States, or that he is God or Christ, or that he is dead, or that he is immortal, or that he has a glass arm, or that he is pursued by enemies, or that he is inspired by God to do something.

In most cases, as I understand it, the fact believed is something affecting the senses. It may also concern the relations of the party with others. But generally the delusion centers around himself, his cares, sufferings, rights and wrongs. It comes and goes independ-

[37] Citing McNaughten's case and Com. v. Rogers, 7 Metc. 500.

ently of the exercise of will and reason, like the phantasms of dreams. It is, in fact, the waking dream of the insane, in which facts present themselves to the mind as real, just as objects do to the distempered vision in *delirium tremens.*

The important thing is that an insane delusion is never the result of reasoning and reflection. It is not generated by them and it cannot be dispelled by them.

A man may reason himself, and be reasoned by others, into absurd opinions, and may be persuaded into impracticable schemes and vicious resolutions, but he cannot be reasoned or persuaded into insanity or insane delusions.

Whenever convictions are founded on evidence, on comparison of facts and opinions and arguments, they are not insane delusions.

The insane delusion does not relate to mere sentiments or theories or abstract questions in law, politics, or religion. All these are the subjects of *opinions*, which are beliefs founded on reasoning and reflection. These opinions are often absurd in the extreme. Men believe in animal magnetism, spiritualism, and other like matters, to a degree that seems unreason itself, to most other people. And there is no absurdity in relation to religious, political and social questions that has not its sincere supporters.

These opinions result from naturally weak or ill-trained reasoning powers, hasty conclusions from insufficient *data*, ignorance of men and things, credulous dispositions, fraudulent imposture, and often from perverted moral sentiments. But still, they are *opinions* founded upon some kind of evidence, and liable to be changed by better external evidence or sounder reasoning. But they are not insane delusions.

Let me illustrate further: A man talks to you so strongly about his intercourse with departed spirits that you suspect insanity. You find, however, that he has witnessed singular manifestations, that his senses have been addressed by sights and sounds, which he has investigated, reflected on, and been unable to account for, except as supernatural. You see, at once, that there is no insanity here; that his reason has drawn a conclusion from evidence.

The same man, on further investigation of the phenomena that staggered him, discovers that it is all an imposture and surrenders his belief.

Another man, whom you know to be an affectionate father, insists that the Almighty has appeared to him and commanded him to sacrifice his child. No reasoning has convinced him of his duty to do it, but the command is as real to him as my voice is now to you. No reasoning or remonstrance can shake his conviction or deter him from his purpose. This is an insane delusion, the coinage of a diseased brain, as seems to be generally supposed, which defies reason and ridicule, which palsies the reason, blindfolds the conscience, and throws into disorder all the springs of human action.

Before asking you to apply these considerations to the facts of

this case let me premise one or two things. The question for you to determine is, what was the condition of the prisoner's mind at the time when this tragedy was enacted? If he was sufficiently sane *then* to be responsible, it matters not what may have been his condition before or after. Still, evidence is properly admitted as to his previous and subsequent conditions, because it throws light, prospectively and retrospectively, upon his condition at the time. Inasmuch as these disorders are of gradual growth and indefinite continuance, if he is shown insane shortly before or after the commission of the crime, it is natural to *conjecture*, at least, that he was so at the time. But all the evidence must center around the time when the deed was done.

You have heard a good deal of evidence respecting the peculiarities of the prisoner through a long period of time before this occurrence, and it is claimed that he was, during all that time, subject to delusions calculated to disturb his reason and throw it from its balance. I only desire to say here that the only materiality of that evidence is in the probability it may afford of the defendant's liability to such disorder of the mind, and the corroboration it may yield to other evidence which may tend directly to show such disorder at the time of the commission of the crime.

A few more words may assist you in applying to the evidence what I have thus stated. You are to determine whether, at the time when the homicide was committed, the defendant was laboring under any insane delusion prompting and impelling him to the deed.

Very naturally you look first, for any explanation of the act which may have been made by the defendant himself at the time or immediately before and after. You have had laid before you, especially, several papers which were in his possession, and which purport to assign the motives for his deed. In the address to the American people of June 16th, which seems most fully to set forth his views, he says: "I conceived the idea of removing the President four weeks ago. Not a soul knew of my purpose. I *conceived the idea myself* and kept it to myself. I read the newspapers *carefully, for* and *against* the administration, and *gradually the conviction dawned on me that the President's removal was a political necessity*, because he proved a traitor to the men that made him, and thereby imperilled the life of the republic." Again:

"Ingratitude is the basest of crimes. That the President, under the manipulation of his secretary of state, has been guilty of the basest ingratitude to the stalwarts, admits of no denial. The expressed purpose of the President has been to crush Gen. Grant and Senator Conkling. and thereby open the way for his renomination in 1884. In the President's madness he has wrecked the once grand old Republican party, *and for this he dies.*" * * * Again:

"This is not murder. It is a political necessity. It will make my friend Arthur President, and save the republic," etc. The other papers are of similar tenor, as I think you will find.

There is evidence that, when arrested, the prisoner refused to talk, but said that the papers would explain all.

On the night of the assassination, according to the witness James J. Brooks, the prisoner said to him that he had thought over it and prayed over it for weeks, and the more he thought and prayed over it the more satisfied he was that he had to do this thing. He *had made up his mind that he had done it as a matter of duty;* * * * he made up his mind that they (the President and Mr. Blaine) were conspiring against the liberties of the people, and that the President must die. This is all that the evidence shows as to the prisoner's utterances about the time of the shooting.

In addition to this you have the very important testimony of the witness Joseph S. Reynolds as to the prisoner's statements, oral and written, made about a fortnight after the shooting. If you credit this testimony you find him reiterating the statements contained in the other papers, but, perhaps, with more emphasis and clearness. He is represented as saying *that the situation at Albany suggested the removal of the president,* and as the factional fight became more bitter, he became more decided. He knew that Arthur would become President, and that would help Conkling, etc. *If he had not seen that the President was doing a great wrong to the stalwarts, he would not have assassinated him.*

In the address to the American people, then written, he says: "*I now wish to state distinctly why I attempted to remove the president.* I had read the newspapers *for and against* the administration, very carefully, for two months, before I conceived the idea of removing him. *Gradually, as the result of reading the newspapers,* the idea settled on me that if the President was removed it would unite the two factions of the Republican party, and thereby save the government from going into the hands of the ex-rebels and their northern allies. *It was my own conception,* and, *whether right or wrong, I take the entire responsibility.*" A second paper, dated July 19th, addressed to the public, reiterates this and concludes, "Whether he lives or dies, I have got the inspiration worked out of me."

We have now before us everything emanating from the prisoner about the time of the shooting and within a ltle over a fortnight afterwards. We have nothing further from him until over three months afterwards. Let us pause here to consider the import of all this.

You are to consider, first, whether this evidence fairly represents the true feelings and ideas which governed the prisoner at the time of the shooting. If it does, it represents a state of things which I have not seen characterized in any judicial utterance or authoritative work as an insane delusion.

You are to consider whether it is so described in the evidence, or does not, on the contrary, show a deliberate process of reasoning and reflection, upon argument and evidence for and against, resulting in an *opinion* that the President had betrayed his party, and

that if he were out of the way it would be a benefit to his party and save the country from the predominance of their political opponents. So far there was nothing insane in the *conclusion*. It was doubtless, shared by a great many others. But the difference was that the prisoner, according to his revelations, went a step further, and reached the *conviction* that to put the President out of the way by assassination was a political necessity.

When men reason the law requires them to reason correctly, as far as their practical duties are concerned. When they have the *capacity* to distinguish between right and wrong they are bound to do it. Opinions, properly so called,—*i. e.*, beliefs resulting from reasoning, reflection or examination of evidence,—afford no protection against the penal consequences of crime. A man may believe a course of action to be right, and the law, which forbids it, to be wrong. Nevertheless, he must obey the law, notwithstanding his convictions. And nothing can save him from the consequences of its violation, except the fact that he is so crazed by disease as to be unable to comprehend the necessity of obedience to it.

The Mormon prophets profess to be inspired and to believe in the duty of plural marriages, although it was forbidden by a law of the United States. One of the sect violated the law, and was indicted for it. The judge who tried him instructed the jury—"That if the defendant, under the influence of a religious belief that it was right —under an inspiration, if you please, that it was right—deliberately married a second time, having a first wife living, the want of consciousness of evil intent, the want of understanding that he was committing a crime, did not excuse him." And the supreme court of the United States, to which the case went (*Reynolds v. U. S.* 98 U. S. 145), approved this ruling.

In like manner a man may reason himself into a conviction of the expediency and patriotic character of political assassination, but to allow him to find shelter from punishment behind that belief, as an insane delusion, would be simply monstrous.

Between one and two centuries ago there arose a school of moralists who were accused of maintaining the doctrine that whenever an end to be attained is right, any means necessary to attain it would be justifiable. They were accused of practicing such a process of reasoning as would justify every sin in the decalogue when occasion required it. They incurred the odium of nearly all Christendom in consequence. But the mode of reasoning attributed to them would seem to be impliedly, if not expressly, reproduced in the papers written by the defendant and shown in evidence: "It would be a right and patriotic thing to unite the Republican party and save the republic. Whatever means may be necessary for that object would be justifiable. The death of the president by violence is the only and therefore the necessary means of accomplishing it, and therefore it is justifiable. Being justifiable as a political necessity, it is not murder."

Such seems to be the substance of the ideas which he puts forth

to the world as his justification in these papers. If this is the whole of his position, it presents one of those vagaries of opinion for which the law has no toleration and which furnishes no excuse whatever for crime.

This, however, is not all that the defendant now claims. There is, undoubtedly, a form of *insane delusion*, consisting of a belief by a person that he is inspired by the Almighty to do something—to kill another, for example—and this delusion may be so strong as to impel him to the commission of a crime.

The defendant, in this case, claims that he labored under such a delusion and impulse, or pressure, as he calls it, at the time of the assassination.

The prisoner's unsworn declarations since the assassination on this subject, in his own favor, are, of course, not evidence, and are not to be considered by you. A man's language, when sincere, may be evidence of the condition of his mind when it is uttered, but it is not evidence in his favor of the facts declared by him, or as to his previous acts or condition. He can never manufacture evidence in this way in his own exoneration.

It is true that the law allows a prisoner to *testify* in his own behalf, and thereby makes his sworn testimony on the witness-stand legal evidence, to be received and considered by you, but it leaves the weight of that evidence to be determined by you also.

I need hardly say to you that no verdict could safely be rendered upon the evidence of the accused party only, under such circumstances. If it were recognized by such a verdict, that a man on trial for his life could secure an acquittal by simply testifying himself, that he had committed the crime charged under a delusion, an inspiration, an irresistible impulse, this would be to proclaim in universal amnesty to criminals in the past, and an unbounded license for the future, and the courts of justice might as well be closed. It must be perfectly apparent to you that the existence of such a delusion can be best tested by the language and conduct of the party immediately before and at the time of the act. And while the accused party cannot make evidence *for* himself by his subsequent declarations, on the other hand, he may make evidence *against* himself, and when those declarations amount to admissions against himself, they are evidence to be considered by a jury.

Let me here say a word about the characteristics of this form of delusion. It is easy to understand that the conceit of being inspired to do an act may be either a sane belief or an insane delusion. A great many Christians believe, not only that events generally are providentially ordered, but that they themselves receive special providential guidance and illumination in reference to both their inward thoughts and outward actions, and, in an undefined sense, are inspired to pursue a certain course of action; but this is a mere sane belief, whether well or ill founded. On the other hand, if you were satisfied that a man sincerely, though insanely, believed that, like Saul of Tarsus, on his way to Damascus, he had been smitten

to the earth, had seen a great light shining around him, had heard a voice from heaven, warning and commanding him, and that thenceforth, in reversal of his whole previous moral bent and mental convictions, he had acted upon this supposed revelation, you would have before you a case of imaginary inspiration amounting to an insane delusion.

The question for you to consider is, whether the case of the defendant presents anything analogous to this. The theory of the government is that the defendant committed the homicide in the full possession of his faculties, and from perfectly sane motives; that he did the act from revenge, or perhaps from a morbid desire for notoriety; that he calculated deliberately upon being protected by those who were politically benefited by the death of the President, and upon some ulterior benefit to himself; that he made no pretense to *inspiration* at the time of the assassination, nor until he discovered that his expectations of help from the so-called stalwart wing of the Republican party were delusive, and that these men were denouncing his deed, and that then, for the first time, when he saw the necessity of making out some defense, he broached this theory of inspiration and irresistible pressure, forcing him to the commission of the act.

If this be true, you would have nothing to indicate the real motives of the act except what I have already considered. Whether it is true or not, you must determine from all the evidence.

It is true that the term "inspiration" does not appear in the papers first written by the defendant, nor in those delivered to Gen. Reynolds, except at the close of the one dated July 19th, in which he says that the *inspiration* is worked out of him; though what that means is not clear. It is true, also, that this was after, according to Gen. Reynolds, he had been informed how he was being denounced by the stalwart republicans. In one of the first papers I have referred to, the President's removal was called an act of God, as were his nomination and election; but whether this meant anything more than that it was an act of God, in the sense in which all great events are said to be ordered by Providence, is not clear.

Finally, on this subject, you have the defendant's own testimony. He does not profess to have had any visions or direct revelation or distorted conception of facts. But he says that while pondering over the political situation the idea suddenly occurred to him that if the president were out of the way the dissensions of his party would be healed; that he read the papers with an eye on the possibility of the President's removal, and the idea kept pressing on him; that he was horrified; kept throwing it off; did not want to give it attention; tried to shake it off; but it kept growing upon him, so that at the end of two weeks his mind was thoroughly fixed as to the necessity for the president's removal and the divinity of the inspiration. He never had the slightest doubt of the divinity of the inspiration from the first of June. He kept praying

about it, and that if it was not the Lord's will that he should remove the President there would be some way by which His providence would intercept the act. He kept reading the newspapers, and his inspiration was *being confirmed every day, and since the* first day of June he has never had a doubt about the divinity of the act. In the cross-examination he said: If the political necessity had not existed the president would not have been removed—there would have been no necessity for the inspiration. About the first of June he made up his mind as to the inspiration of the act, and the necessity for it; from the sixteenth of June to the second of July he prayed that *if he was wrong*, the Deity would stop him by His providence; in May it was an embryo inspiration—a mere impression that possibly it might have to be done; he was doubting whether it was the Deity that was inspiring him, and was praying that the Deity would not let him make a mistake about it; and that at last it was the Deity, and not he, who killed the president. Again, the confirmation that it was the Deity, and not the devil, who inspired the idea of removing the President, came to him in the fact that the newspapers were all denouncing the president. He saw that the political situation required the removal of the president, and that is the way he knew that his intended act was inspired by the Deity; but for the political situation, he would have thought that it came from the devil. This is the substance of all that appears in the case on the subject of inspiration.

It is proper to call your attention to some variations in the prisoner's statements at different times.

In two of the papers of July he says it *was his own conception*, and he took the *entire responsibility*. In the conversations reported by Dr. Gray, in November, he did not connect the Deity with the inception of the act. The conception was his own, and the inspiration came after he made up his mind; but he does not explain what he meant by the inspiration, unless it was that it was a pressure upon him, or, as he expresses it, the duty of doing it was pressing upon him.

In his testimony *he disclaims all responsibility*, while he still speaks of the idea of removing the President as an impression which arose in his own mind first. He says that in his reflections about it he debated with himself whether it came from the Deity or the devil; prayed that God would prevent it if it was not His will; and finally made up his mind, from a consideration of the political situation, that it was inspired by Him. On all this the question for you is, whether, on the one hand, the idea of killing the president first presented itself to the defendant in the shape of a command or inspiration of the Deity, in the manner in which insane delusions of that kind arise, of which you have heard much in the testimony; or, on the other hand, it was a conception of his own, followed out to a resolution to act; and if he thought at all about inspiration, it was simply a speculation or theory, or theoretical conclusion of his own mind, drawn from the expediency or necessity of the act, that his previously-conceived ideas were inspired.

If the latter is a correct representation of his state of mind it would show nothing more than one of the same vagaries of reasoning that I have already characterized as furnishing no excuse for crime.

Unquestionably a man may be insanely convinced that he is inspired by the Almighty to do an act, to a degree that will destroy his responsibility for the act. But, on the other hand, he cannot escape responsibility by baptizing his own sponteaneous conceptions and reflections and deliberate resolves with the name of *inspiration.*

On the direct question whether the prisoner knew that he was doing wrong at the time of the killing, the only direct testimony is his own, to the contrary effect. One or two circumstances may be suggested as throwing some light on the question.

The declaration that, *right or wrong,* he took the responsibility, made shortly afterwards, may afford some indication whether the question of wrong had suggested itself. And his testimony that he was horrified when the idea of assassination first occurred to him, and he tried to put it away, is still more pertinent. His statement, testified to by Dr. Gray, that he was thinking of the defense of inspiration while the *assassination* was being planned, tends to show a knowledge of the *legal* consequences of the killing. His present statement, that no punishment would be too quick or severe for him if he killed the President otherwise than as agent of the Deity, shows a present knowledge of the wrongfulness of the act in itself; but this declaration is of value on this question of knowledge, only in case you should believe that he had the same appreciation of the act at the time of its commission and disbelieve his story about the inspiration.

I have said nearly all that I need say on the subject of insane delusion.

The courts have settled down upon the question of knowledge of right and wrong as to the particular act, or rather the capacity to know it, as the test of responsibility; and the question of insane delusion is only important as it throws light upon the question of knowledge of, or capacity to know, the right and wrong.

If a man is under an insane delusion that another is attempting his life, and kills him in self-defense, he does not know that he is committing an unnecessary homicide. If a man insanely believes that he has a command from the Almighty to kill, it is difficult to understand how such a man *can* know that it is wrong for him to do it. A man may have some other insane delusion which would be quite consistent with a knowledge that such an act is wrong—such as, that he had received an injury—and he might kill in revenge for it knowing that it would be wrong.

And I have dwelt upon the question of insane delusion, simply because evidence relating to that is evidence touching the defendant's power, or want of power, from mental disease, to distinguish between right and wrong, as to the act done by him, which is the

broad question for you to determine, and because that is the kind of evidence on this question which is relied on by the defense.

It has been argued with great force, on the part of the defendant, that there are a great many things in his conduct which could never be expected of a sane man, and which are only explainable on the theory of insanity. The very extravagance of his expectations in connection with this deed—that he would be protected by the men he was to benefit, would be applauded by the whole country when his motives were made known—has been dwelt upon as the strongest evidence of unsoundness.

Whether this and other strange things in his career are really indicative of partial insanity, or can be accounted for by ignorance of men, exaggerated egotism, or perverted moral sense, might be a question of difficulty. And difficulties of this kind you might find very perplexing, if you were compelled to determine the question of insanity generally, without any rule for your guidance.

But the only safe rule for you is to direct your reflections to the one question which is the test of criminal responsibility, and which has been so often repeated to you, viz., whether, whatever may have been the prisoner's singularities and eccentricities, he possessed the mental capacity, at the time the act was committed, to know that it was wrong, or was deprived of that capacity by mental disease.

In all this matter there is one important distinction that you must not lose sight of, and you are to decide how far it is applicable to this case. It is the distinction between mental and moral obliquity; between a mental incapacity to understand the distinctions between right and wrong, and a moral indifference and insensibility to those distinctions. The latter results from a blunted conscience, a torpid moral sense or depravity of heart; and sometimes we are not inapt to mistake it for evidence of something wrong in the mental constitution. We have probably all known men of more than the average of mental endowments, whose whole lives have been marked by a kind of moral obliquity and apparent absence of the moral sense. We have known others who have first yielded to temptation with pangs of remorse, but each transgression became easier, until dishonesty became a confirmed habit, and at length all sensitiveness of conscience disappeared.

When we see men of seeming intelligence and of better antecedents reduced to this condition, we are prone to wonder whether the balance-wheels of the intellect are not thrown out of gear. But indifference to what is right is not ignorance of it, and depravity is not insanity, and we must be careful not to mistake moral perversion for mental disease.

Whether it is true or not that insanity is a disease of the physical organ, the brain, it is clearly in one sense a disease, when it attacks a man in his maturity. It involves a departure from his normal and natural condition. And this is the reason why an inquiry into the man's previous condition is so pertinent, because it

tends to show whether what is called an act of insanity is the natural outgrowth of his disposition or is utterly at war with it, and therefore indicates an unnatural change.

A man who is represented as having been always an affectionate parent and husband, suddenly kills wife and child. This is something so unnatural for such a man that a suspicion of his insanity arises at once. On further inquiry we learn that instead of being as represented, the man was always passionate, violent, and brutal in his family. We then see that the act was the probable result of his bad passions, and not of a disordered mind.

Hence the importance of viewing the moral as well as intellectual side of the man, in the effort to solve the question of sanity. That evidence on this subject is proper was held by the supreme judicial court of New Hampshire in *State* v. *Jones*, 50 N. H. It was upon the principle enunciated in this case that evidence was received in the present case tending to show the moral character of the accused, and offered for the purpose of showing that eccentricities relied on as proof of unsound mind were accounted for by want of moral principle.

From the materials that have been presented to you two pictures have been drawn by counsel. The one represents a youth of more than the average of mental endowments, surrounded by certain demoralizing influences at a time when his character was being developed; starting in life without resources, but developing a vicious sharpness and cunning; conceiving "enterprises of great pith and moment," that indicated unusual forecast, though beyond his resources; consumed all the while by insatiate vanity and craving for notoriety; violent in temper, selfish in disposition, immoral, and dishonest in every direction; leading a life, for years, of hypocrisy, swindling, and fraud; and finally, as the culmination of a depraved career, working himself into a resolution to startle the country with a crime that would secure him a bad eminence, and, perhaps, a future reward.

The other represents a youth born, as it were, under malign influences, the child of a diseased mother, and a father subject to religious delusions; deprived of his mother at an early age; reared in retirement and under the influence of fanatical religious views; subsequently, with his mind filled with fanatical theories, launched upon the world with no guidance save his own impulses; then evincing an incapacity for any continuous occupation; changing from one pursuit to another—now a lawyer, now a religionist, now a politician—unsuccessful in all; full of wild impracticable schemes, for which he had neither resources nor ability; subject to delusions about his abilities and prospects of success, and his relations with others; his mind incoherent and incapable of reasoning connectedly on any subject; withal, amiable, gentle, and not aggressive, but the victim of surrounding influences, with a mind so weak and a temperament so impressible that, under the excitement of political controversy, he became frenzied and insanely deluded, and thereby

impelled to the commission of a crime, the guilt of which he could not, at the moment, understand.

It is for you to determine which of these is the portrait of the accused.

Before saying a last word my attention has just been called to, and I have been requested by counsel for the defendant to give, certain additional instructions. One is: "It is the duty of each juror to consider the evidence, all pertinent remarks of counsel, and all the suggestions of fellow-jurors, but to disregard all statements of counsel and declarations of the prisoner except such as are founded upon the evidence." Of course, that is a truism, and does not require any particular instruction.

"The testimony of the prisoner they will weigh as to credibility, and judge of by the same rules and considerations applied to that of other witnesses." That is all true, provided that all the influences that governed the prisoner are duly weighed and considered.

"And after all, each juror should decide for himself upon his oath as to what his verdict should be. No juror should yield his deliberate, conscientious conviction as to what the verdict should be, either at the instance of a fellow-juror or at the instance of a majority. Above all, no juror should yield his honest convictions for the sake of unanimity, or to avert the disaster of a mistrial. Jurors have nothing to do with the consequences of their verdict." All that, gentlemen, is true. Some of it is substantially embodied, I think, in what I have already said.

And now, to sum up all that I have said, in a few words:

If you find from the whole evidence that, at the time of the commission of the homicide, the prisoner, in consequence of disease of mind, was laboring under such a defect of his reason that he was incapable of understanding what he was doing, or that it was wrong —as, for example, if he was under an insane delusion that the Almighty had commanded him to do the act, and in consequence of that he was incapable of seeing that it was a wrong thing to do— then he was not in a responsible condition of mind, and was an object of compassion, and not of justice, and ought to be now acquitted.

On the other hand, if you find that he was under no insane delusion, such as I have described, but had possession of his faculties and the power to know that his act was wrong, and of his own free will deliberately conceived, planned, and executed this homicide, then, whether his motive was personal vindictiveness or political animosity, or a desire to avenge a supposed political wrong, or a morbid desire for notoriety, or fanciful ideas of patriotism or of the divine will, or you are unable to discover any motive at all, the act is simply *murder*, and it is your duty to find him guilty.

Now, gentlemen, retire to your rooms and consider this matter, and make due deliberation in the case of the United States against Guiteau.

THE VERDICT AND SENTENCE.

At 4:40 the Jury retired and half an hour later sent word to the bailiff in charge that they had agreed. They came into court.

The Clerk. Have you agred upon a verdict?

The Foreman. We have. Guilty as indicted. They were then polled, each man responding "Guilty."[38]

Guiteau. My blood will be upon the heads of that jury, don't you forget it. That is my answer. God will avenge this outrage.

THE COURT. Gentlemen of the jury, I cannot express too much thanks to you, both in my own name and in the name of the public, for the diligence and fidelity with which you have discharged your duties; for the patience with which you have listened to this long mass of testimony, and the lengthy discussion by counsel; and for the patience with which you have borne with the privations and inconveniences incident to this trial. I am sure that you will take home with you the approval of your own consciences as you will have that of your fellow-citizens. With thanks and good wishes, I discharge you from any further service at this term of the court.

February 3.

The Prisoner's Counsel applied for a new trial, alleging new evidence of his insanity, and that a Washington newspaper describing the attack by Jones on the prisoner had been found in the jury room showing that they had read the paper.[39]

February 4.

JUDGE COX overruled the motion for a new trial.

Guiteau. I ask your honor if there is anything I can do to preserve my rights in banc. I expect to have to have two or three of the best lawyers in America to represent me there.

JUDGE COX. Every right shall be reserved.

The Prisoner. Do I understand it is necessary to pass sentence now?

THE COURT. The sentence is passed now, but the execution of it is deferred until after the consideration by the court in banc.

The Prisoner. Within what time will your Honor—(to Mr. Scoville, who is attempting to silence him): Keep quiet yourself; you convicted me by your fool theory and consummate asinine conduct. If you had kept entirely away from me I would have had the best lawyers in America, and I could have got them in October, but you

[38] There was great applause in the court room. As he was being taken out he said to the reporters: "The Court in banc will reverse this business." When he reached the street a great crowd outside greeted him with jeers, hisses and groans.

[39] As evidence of this a newspaper was provided with the signatures of several of the jurors scribbled on it. But the jurors swore positively to the contrary and it would seem that the signatures were forged.

came on the case and I didn't ask you. Your intentions are good, but you are deficient in brains and experience. I want brains and experience on this case and not intentions. That is my record on you. Now I want you to let me alone and I will pull out of this. You have got me into this trouble.

The District Attorney. The duty is now imposed upon me to ask the Court to pass sentence in accordance with the verdict.

The Prisoner. I ask your Honor to defer that as long as you can.

THE COURT. Stand up. Have you anything to say why sentence should not be pronounced?

Guiteau. I am not guilty of the charge set forth in the indictment. It was God's act, not mine, and God will take care of it. He will take care of it, and don't let the American people forget it. He will take care of it and every officer of this Government from the Executive down to that Marshal, taking in every man on the jury and every member of this Bench will pay for it; and the American nation will roll in blood if my body goes into the ground and I am hung. The Jews put the despised Gallilean in the grave. For the time they triumphed, but at the destruction of Jerusalem forty years afterward the Almighty got even with them. I am not afraid of death. I am here as God's man. Kill me to-morrow, if you want. I am God's man and I have been from the start. I care not what men shall do with me.

JUDGE COX. You have been convicted of a crime so terrible in its circumstances and so far-reaching in its results that it has drawn upon you the horror of the whole world and the execrations of your countrymen. The excitement produced by such an offense made it no easy task to secure for you a fair and impartial trial, but you have had the power of the United States Treasury and of the Government in your service to protect your person from violence and to procure evidence from all parts of the country. You have had as fair and impartial a jury as ever assembled in a court of justice. You have been defended by counsel with a zeal and devotion that merits the highest encomium, and I certainly have done my best to secure a fair presentation of your defense. Notwithstanding all this you have been found guilty. It would have been a comfort to many people if the verdict of the jury had established the fact that your act was that of an irresponsible man. It would have left the people the satisfying belief that the crime of political assassination was something entirely foreign to the institutions and civilization of our country, but the result has denied them that comfort. The country will accept it as a fact that that crime can be committed, and the Court will have to deal with it with the highest penalty known to the criminal code to serve as an example to others. Your career has been so extraordinary that people might well at times have doubted your sanity. But one cannot but believe that when the crime was committed you thoroughly understood the nature of the crime and its consequences and had entire control of your actions.

Guiteau. I was acting as God's man.

JUDGE COX. And that you had moral sense and conscience enough to recognize the moral iniquity of such an act. Your own testimony shows that you recoiled with horror from the idea. You say that you prayed against it. You say that you thought it might be prevented. This shows that your conscience warned you against it, but by the wretched sophistry of your own mind you worked yourself up against the protest of your own conscience. What motive could have induced you to this act must be a matter of conjecture. Probably men will think that some fanaticism or a morbid desire for self-exaltation was the real inspiration for the act. Your own testimony seems to controvert the theories of your counsel. They have maintained and thought honestly, I believe, that you were driven against your will by an insane impulse to commit the act, but your testimony showed that you deliberately resolved to do it, and that a guilty and misguided will was the sole impulse. This may seem insanity to some persons, but the law looks upon it as a willful crime. You will have due opportunity of having any errors I may have committed during the course of the trial passed upon by the Court in banc, but meanwhile it is necessary for me to pronounce the sentence of the law—that you be taken hence to the common jail of the District, from whence you came, and there be kept in confinement, and on Friday, the 30th day of June, 1882, you be taken to the place prepared for the execution, within the walls of said jail, and there between the hours of 12 and 2 P. M., you be hanged by the neck until you are dead, and may the Lord have mercy on your soul.

Guiteau. And may God have mercy on your soul. I had rather stand where I am than where that jury does, or than where your Honor does. I am not afraid to die. Confound you (struggling with the Deputy Marshals) leave me alone. I know where I stand on this business. I am here as God's man and don't you forget it. God Almighty will curse every man who has had anything to do with this act. Nothing but good has come of General Garfield's removal, and that will be posterity's view of it. Everybody is happy here except a few cranks. Nothing but good has come to this nation from his removal. That is the reason the Lord wanted him removed.

Mr. Scoville took an exception to the judgment and sentence of the Court.

Guiteau. I'd rather a thousand times be in my position than be with those devils who have hounded me to death. I will have a flight to glory, and I am not afraid to go. But Corkhill and the others are. There is no let up on Corkhill, the scoundrel. He has a permanent job down below. I will go to glory whenever the Lord wants me to go, but I will probably stay down here a good many years and get into the White House. I know how I stand on this business and so does the Lord and He will pull me through with the help of two or three good lawyers, and all the devils in hell can't hurt me.

On April 24, *Mr. Scoville* withdrew from the case;[40] on May 9 the appeal was argued before the Supreme Court of the District of Columbia, and on May 22 that tribunal unanimously refused a new trial. A motion for a rehearing was overruled on June 5. An application was made to Mr. Justice Bradley[41] of the United States Supreme Court for a writ of habeas corpus which, on June 19 he denied, holding that the Court for the District of Columbia had full jurisdiction of the case. The last appeal was made to President Arthur to grant a respite until a medical commission could repass on the question of the alleged insanity of the murderer. Attorney General Brewster[42] on June 24 advised that the sentence be not interfered with. This recommendation was unanimously approved by the Cabinet; the President refused the respite.

THE EXECUTION.

June 30.

After a restless night, Guiteau ate a hearty breakfast at 6:30, ordering his dinner to be brought at 11 promptly. To Rev. Dr. Hicks, who had spent the night with him, he expressed anxiety that some accident might occur and requested him to examine the scaffold, and remarked: "My heart is tender. I don't think I can go through this ordeal without weeping, not because of any great weakness, for the principle in me is strong, but because I am nearer the other world. I hold to the idea that God inspired me."

He asked that in his books all complimentary remarks about President Arthur and his administration be eliminated. Then he presented to Dr. Hicks the books that had been his companions.

He told Dr. Hicks that he wanted him to offer the first prayer on the scaffold, saying he (Guiteau) would then read his favorite

[40] In his letter to the Supreme Court he said: With my conviction as to the mental infirmities of the prisoner and his consequent irresponsibility, I have endeavored to and would suffer yet longer his ingratitude and abuse, were I able to give further time and services to his defense. The imperative cause of withdrawal is my inability, without absolute ruin to my family and myself, to give further time to this case away from home. I do not wish to obtrude my personal affairs upon the Court, but cannot refrain from saying that my unfortunate and reluctant connection with the case has been the source of untold trouble to me. Guiteau says he regrets that his relatives had not all died twenty-five years ago. It certainly would have been better for himself, and the world, at least for the Garfield and Scoville portion of mankind, if he had never been born. Thanking the Court, and especially Judge Cox, for the uniform kindness and courtesy shown me, I ask your Honors to accept my withdrawal.

[41] See 4 Am. St. Tr., 476.

[42] See 3 Am. St. Tr., 309.

Scriptural passage, the 10th chapter of Matthew, and offer a prayer on his own account. It was arranged that he should drop a piece of paper as a signal for the drop. At 9:15 he took exercise in the corridor, walking so briskly that his guards could hardly keep pace with him. At 10 o'clock he took a plunge bath in the presence of the "death watch" only. About 11 o'clock he called for paper and busied himself copying his "Prayer upon the scaffold."

Then the guard came out of the door and said, "He is ready for the Doctor now, and wants the flowers to come." But if any flowers were sent to him they were detained by the authorities, who had suspicions that some of them were impregnated with poison. In the meantime he had his boots blackened and had eaten his dinner.

At five minutes past 12 General Crocker read the death warrant to the prisoner in his cell. The only persons present were General Crocker, Warden, Deputy Warden Rush, and Rev. Dr. Hicks.

The procession moved quietly to the scaffold and Guiteau ascended the twelve steep steps with as much steadiness as could be expected from a man whose arms were tightly pinioned behind him. Guiteau gazed upon the crowd, looked up at the beam over his head and quickly made a survey of all the dread paraphernalia. All heads were bared and Dr. Hicks made an invocation.

During the prayer Guiteau stood with bowed head. At the conclusion Dr. Hicks opened the Bible, and Guiteau, in firm tones, said: "I will read a selection from the 10th chapter of Matthew from 28th to 41st verse inclusive."

He read this in a clear, strong voice, and with good intonation, showing little, if any, nervousness. Dr. Hicks then produced the manuscript which was prepared by the prisoner that morning, and held it before Guiteau for him to read. Guiteau exhibited a slight nervousness, and moved several times. Looking over the sea of upturned faces he said, "I am now going to read to you my last dying prayer." He then read in a loud tone, and with distinct and deliberative emphasis the following:

"Father, now I go to Thee and the Saviour. I have finished the work Thou gavest me to do and I am only too happy to go to Thee. The world does not yet appreciate my mission; but Thou knowest it. Thou knowest Thou didst inspire Garfield's removal, and only good has come from it. This is the best evidence that the inspiration came from Thee, and I have set it forth in my book that all men may read and know that Thou, Father, didst inspire the act for which I am now murdered. This Government and nation by this act I know will incur Thy enmity as did the Jews by killing Thy Man, my Saviour. The retribution in that case came quick and sharp, and I know Thy divine law of retribution will strike this nation and my murderers in the same way. The diabolical spirit of this nation, its Government, and its newspapers, towards me will justify Thee in cursing them, and I know that Thy divine law of retribution is inexorable. I therefore predict that this nation will

go down in blood and that my murderers, from the Executive to the hangman, will go to hell. Thy laws are inexorable. Oh Thou Supreme Judge! Woe unto the men that violate Thy laws! Only weeping and gnashing of teeth awaits them. The American press has a large bill to settle with the Righteous Father for their vindictiveness in this matter. Nothing but blood will satisfy them, and now my blood be on them and this nation and its officials. Arthur, the President, is a coward and an ingrate. His ingratitude to the man that made him and saved his party and land from overthrow has no parallel in history, but Thou, Righteous Father, will judge him. Father Thou knowest me, but the world hath not known me, and now I go to Thee and the Saviour without the slightest ill-will towards a human being. Farewell, ye men on earth."

When he had finished reading his prayer he again surveyed the crowd and said, still with a firm voice: "I am now going to read some verses which are intended to indicate my feelings at the moment of leaving this world. If set to music they may be rendered effective. The idea is that of a child babbling to his mamma and his papa. I wrote it this morning about 10 o'clock.

He then commenced to chant these verses in a dolëful style:

"I am going to the Lordy. I am so glad.
I am going to the Lordy. I am so glad.
I am going to the Lordy. Glory, hallelujah; glory hallelujah.
I am going to the Lordy;
I love the Lordy with all my soul; glory, hallelujah.
And that is the reason I am going to the Lord.
Glory, hallelujah; glory, hallelujah. I am going to the Lord."
I saved my party and my land; glory, hallelujah.
But they have murdered me for it, and that is the reason I am going to the Lordy.
Glory, hallelujah; glory, hallelujah. I am going to the Lordy.
I wonder what I will do when I get to the Lordy;
I guess that I will weep no more when I get to the Lordy.
Glory, hallelujah!
I wonder what I will see when I get to the Lordy,
I expect to see most splendid things, beyond all earthly conception.
When I am with the Lordy, glory, hallelujah! (raising his voice to the highest pitch that he could command) glory, hallelujah! I am with the Lord."

Rev. Dr. Hicks said: "God the Father be with thee and give thee peace evermore." Attendants pinioned his legs, placed the noose over his head, adjusted it about his neck; placed the black cap over his head. Guiteau called out in loud tones, "Glory, glory, glory," and dropped a piece of paper; instantly the spring was touched, the drop fell and Guiteau swung in the air. The body turned partly around, but there was not the slightest perceptible movement of the limbs, or any evidence of a conscious effort to move them.

When the drop fell a yell was sent up by some persons inside the

jail. This was echoed outside by the voices of a thousand or more people, who hurrahed lustily. For forty seconds after the drop fell the body hung motionless, then there was a slight motion of the shoulders and legs, due to muscular contraction.

Three minutes after the body was lowered to be examined by the physicians. There was a decided action of the heart for fully fourteen minutes, and the pulse fluttered two minutes longer. When the body had hung with the feet just touching the ground for over half an hour, it was lowered into the coffin which was waiting for it under the scaffold. The physicians decided at once that the neck had been broken. When the body was lowered the black cap was removed and the face exposed. The features were pallid and composed. Warden Crocker ascended the steps of the scaffold and, addressing the crowd, said those who desired could pass along the side of the scaffold and view the body.

Some jail officers, two or three physicians, and Dr. Hicks stood about the coffin. John W. Guiteau fanned his dead brother's face. At 1:40 the body was borne to the jail chapel, where the physicians who were to make the autopsy were assembled.

A close examination proved that the neck was broken and that the rope had cut deep into the flesh.

As Mr. Guiteau and Dr. Hicks declined to remove the body from fear that it would not be safe in their possession outside the jail the interment took place the day after the execution in one of the corridors of the jail, the exact spot even being retained as an official secret. But before burial his body was taken for dissection.

"There was some delay and the weather was as hot as it can only be in Washington in summer. The brain, therefore, was found to have undergone the post-mortem softening that might have been expected. Pieces were taken by various physicians and I made a careful examination, but with negative results. Other specimens were taken by Dr. Lamb of the Surgeon General's office, who had made the atopsy on the body of President Garfield, and by Dr. Shakspere, a distinguished pathologist of Philadelphia. One neurologist who was present at the autopsy and who examined it, declared the brain of the assassin to be affected. I believe that the appearances he found were undoubtedly due to carelessness in handling and to the hot weather in which conclusion the others agreed."[43]

Two official reports of medical examinations, microscopical and otherwise, of the assassin's brain were afterwards published.

[43] Dr. Hamilton's Reminiscences, p. 359. See ante p. 4.

THE TRIAL OF LEON F. CZOLGOSZ FOR THE MURDER OF PRESIDENT McKINLEY, BUFFALO, NEW YORK, 1901.

THE NARRATIVE.

In September, 1901, President McKinley[1] paid an official visit to the Pan-American Exhibition at Buffalo, N. Y. September 5th was set apart as President's Day, when he delivered on the grounds an address to a great assemblage. On the morning of September 6th he was taken by the Exposition and city officials on an excursion to Niagara Falls, from which he returned at 4 p. m., to the Temple of Music, where a public reception was held. Here the President (at his left and right the President of the Exposition[2] and his secretary[3] and surrounded by Secret Service detectives and soldiers) shook hands with a long line of citizens of every rank and condition. The reception was nearly over, when the next man in line, who had the appearance of a young work-

[1] McKinley, William (1843-1901). Born Niles, Ohio. His parents being poor, at the age of seventeen he became a country school teacher. In 1868 he enlisted in the 23d Ohio, its Colonel being Rutherford B. Hayes. He rose by successive promotions to the rank of Major and was mustered out of service in July, 1865. Studied law and began the practice in Canton, 1867; Member House of Representatives, 1876-1890; Governor of Ohio; elected President of the United States, November, 1896, and re-elected November, 1900.

[2] Milburn, John George. Born Sunderland, Eng., 1851; studied law at Batavia, N. Y., and practiced in Buffalo and New York City; President Pan-American Exposition, 1901.

[3] Cortelyou, George Bruce. Born New York City, 1862; Grad. State Normal, Westfield, Mass., 1882; Georgetown Univ. (LL. B.), 1891; (LL. D. Hon.), 1903; Stenographer to President Cleveland, 1885, and secretary to Presidents McKinley and Roosevelt, 1898-1903; Secretary of Commerce and Labor, 1903; Chmn. Nat. Rep. Com., 1904; Postmaster General, 1905-1907; Secretary of Treasury, 1907-1909; Pres. Con. Gas Co., N. Y.

man, but whose right hand was wrapped in a handkerchief as if it were wounded, offered his left to the President, who grasped it. Like a flash he withdrew his right hand and pressing it against the President's body, fired into him two shots from a pistol concealed in the handkerchief. The President fell back in a chair, exclaiming, "May God forgive him." The guards sprang upon the assassin, bore him to the ground, one of them striking him a fierce blow in the face, his pistol was secured and he was at once taken to jail after a narrow escape from being lynched.

President McKinley was removed to the home of Mr. Milburn where a surgical operation disclosed that one of the bullets had done no harm, but the other had passed through his stomach, lodged in his back and could not be located. For several days he seemed to be doing well and on September 11th his physicians thought him out of danger, but two days later there came a sudden change and he died on the morning of September 14th.

The assassin was Leon F. Czolgosz, a workman 28 years old, born in Detroit, Michigan, but of foreign parents. He stated that he shot President McKinley because he thought it was his duty. He did not believe that one man should have so much service and another man should have none, and all the others regard it as a privilege to stand by and render services; that he understood the consequences and was willing to take his chances. He had gone to Niagara Falls in the morning intending to kill the President there, but was not able to get near enough to him. He then returned to the Exposition grounds intending to get near him and shoot him. He arranged his revolver, covering it with his handkerchief in his right hand. If he had not been seized and thrown to the ground he would have fired other shots. He had been thinking about killing the President for several days before that; he had determined to kill him at the first opportunity, for he thought the President was a tyrant and should be removed; he had for several years been studying the doctrines of anarchy; he believed in no

government, no marriage relation and had been influenced by the teachings of Emma Goldman.

Notwithstanding the great grief and indignation of the whole Nation and the demand that the assassin should be promptly punished, the enormity of the crime suggested to most people that it could only be the act of an insane man. The legal officials in the city of Buffalo, representing not only the people of the State of New York but those of the whole Nation, gave to the accused every consideration possible.[4] The Bar Association of the County, through its presi-

[4] In a letter to the editor, Mr. Penney, the then Public Prosecutor of Erie County, says:

"Immediately upon the announcement of the shooting of President McKinley the people of Buffalo became greatly excited. Immense crowds began to congregate in various places, especially around Police Headquarters. It was the consensus of opinion of those in charge of the Police and the Prosecuting Department, of which I happened to be the head, that it needed but a spark to start a very serious situation. It was our thought that if anyone was daring enough to attempt to become a leader the mob would undoubtedly make an effort to take the prisoner from the custody of the authorities and that a disgraceful tragedy would follow. We immediately gave our attention to the task of averting such a disaster and perfected plans to keep from the crowd the knowledge of the whereabouts of the prisoner. After a conference with General Bull, who was then in charge of the Police, and after a brief interrogation of the man at Police Hearquarters we had him quietly and secretly taken from the rear of the building and conveyed in a private conveyance to the Penitentiary, instead of the Jail, which was the usual place to which a prisoner was taken. Under my direction there were assigned to be the prisoner's guards a sufficient number of selected men, known to be trustworthy, so that there was always at least two men on guard with the prisoner from the time of his arrest until after his trial.

The purpose of keeping so close a guard of the prisoner was twofold: (1) to safeguard him from any mob attack which might be incited at the time; (2) but more especially to prevent the prisoner from being interviewed by any of the sensational news writers of the day who were here in great numbers from all over the country.

When news of this unfortunate tragedy reached me I recalled to mind the disgraceful scenes that surrounded the detention and trial of the assassin of President Garfield in Washington, the man Guiteau, and I was determined so far as lay within my power not only to avoid a repetition of those disgraceful scenes, but to make

dent, Mr. Adelbert Moot[5] induced two of the oldest and most respected members of the New York Bar, both of them retired Judges of its Supreme Court, to accept from a high sense of duty to the public, the defense of the prisoner; and

the prosecution of Czolgosz an orderly, dignified procedure that could in no way bring criticism upon our own community or upon our form of government generally.

I do not believe that there were many at the time, and but very few now, who realized the extraordinary difficulties which we faced and the great pressure that was brought to bear upon myself, my office and General Bull of the Police Department to gain access to this man Czolgosz. Large sums of money were offered to my subordinates to procure from them even their recollections of what they had seen of this man or heard of his statements, but I was fortunate enough to be surrounded by trustworthy people. and, as you will recall, not a word was printed in the newspapers and not a single reporter had access to this prisoner; in fact, not any person except a few of the officials in charge of his prosecution and his own counsel.

During the time when our beloved President McKinley was suffering from his wounds and before he died members of his Cabinet and Vice-President Roosevelt were here; also the President's Secretary, Mr. Cortelyou. They were, of course, primarily interested in the condition of the President, but they were also vitally interested in the procedure attendant upon the prosecution of his assassin. I had many conferences with several of them, including Mr. Root and Mr. Cortelyou and Vice-President Roosevelt, and I was very glad to find that my own ideas of how the procedure for the prosecution of this man should be conducted were approved by all of them; that is, that all the proceedings should be conducted with the utmost dignity; that every sensational feature should be eliminated; that this man should have every right extended to him under our laws; that there should be permitted no feeling or expression that might be termed "vengeance" for the great wrong that he had perpetrated upon our country. In carrying out those ideas everything was done for this man that would have been done for any other individual charged with any crime—even more, because he was given the advantage of having the best legal counsel that could be obtained, besides having the best medical advice in the country.

In my judgment, the greatest and most important aspect of that situation was keeping the whole proceedings on such a high plane; keeping the custody of the prisoner in the beginning so free from sensationalism; preventing an outbreak of the populace to commit unlawful acts; and carrying the whole thing through in such an orderly manner. Many of the things last mentioned above were not thought of by the average individual and certainly were not

experts to examine his mental condition selected by his counsel were allowed free access to him and both they and his lawyers were paid out of the public treasury[6] The trial judge refused to accept his plea of guilty in order that the fullest examination should be made as to his legal responsibility and that the question of his guilt should be passed upon by twelve of the citizens of the county where the crime was committed. And after his sentence his sanity was again examined by experts on medical diseases.

His trial, which began on September 23d, lasted only two days, a verdict of guilty being returned in half an hour. The question of insanity was not raised, except in the speeches to the jury, as all the experts reported that he was sane and no witness appeared in his defense.

On October 29th he was electrocuted in the State Prison at Auburn. He walked quietly to the chair and said:

"I killed the President because he was the enemy of the good people; of the good working people. I am not sorry for the crime, that's all there is about it."

At that moment the current was turned on; his body bounded against the back of the chair and the Anarchist was dead. Several specialists then held an autopsy and found all the organs, including the brain, in a perfectly normal condition. A grave had been prepared in the prison

known to most people, but they were very much more important than the trial itself or what is ordinarily called the prosecution of the criminal. The first unofficial interview with Czolgosz was had after his conviction and after he had been put into the custody of the Sheriff to be transported to Auburn. All of this was not strictly a part of the trial, but in my judgment, was much more important than the actual trial itself."

[5] MOOT, ADELBERT. Born, Allen, N. Y., 1854; Grad. State Normal School and Albany Law School. Began practice, Nunda, N. Y., 1876, and in Buffalo, since 1879; Presdt. Unitarian Congress, 1915; Commr. of Statutory Consolidation, N. Y., Regent Univ. of N. Y.; Presdt. State Bar Assn, 1909-1910.

[6] Mr. Lewis and Mr. Titus received a fee of $350 each. The alienists who examined him received: Dr. Carlos F. McDonald, $300; Dr. Joseph Fowler, $200; Dr. Floyd S. Crego, $200, and Dr. James W. Putnam $200.

yard into which was emptied six barrels of quicklime and a carboy of sulphuric acid, and in this the body of Czolgosz was placed.

THE TRIAL.[7]

In the Supreme Court, Buffalo, New York, 1901.

HON. TRUMAN C. WHITE,[8] *Judge.*

September 16.

Today at 4:40 p. m., the grand jury of Erie County returned an indictment charging Leon F. Czolgosz, alias Fred R. Nieman, with the shooting of William McKinley on September 6, 1901, from the effects of which he died on September 14. At 5:40 the prisoner was brought into the County Court, JUDGE EDWARD K. EMERY[9] presiding. He was of medium height and size, fair hair and complexion, with a face not bad, but rather simple and loutish in its

[7] *Bibliography.* "The trial, execution, autopsy and mental status of Leon F. Czolgosz, alias Fred Nieman. By Carlos F. MacDonald, A. M. M. D. With a report of the post-mortem examination, by Edward Spitzka. * * * Baltimore, 1902. (From American journal of insanity. Vol. LVIII, No. 3, 1902.)"

"Official Report of the Experts for the People in the case of The People vs. Leon F. Czolgosz. By Joseph Fowler, M. D., of Buffalo, N. Y.; Floyd S. Crego, M. D., Professor of Insanity and Brain Diseases in the University of Buffalo; James W. Putnam, M. D., Professor of Nervous Diseases in the University of Buffalo, N. Y. Reprinted from the Philadelphia Medical Journal, 1901."

"The Trial of the Anarchist Murderer, Czolgosz. Leroy Parker. The Yale Law Journal, vol. 11, pp. 85-94."

"The Buffalo Express and the Buffalo Courier. Sept. 22-26, 1901."

"The Washington Star, Sept. 23-25, 1901."

"The New York Times, Sept. 23-25, 1901."

"The Life of William McKinley" (Fallows).

[8] WHITE, TRUMAN CLARK (1840-1912). Born Perrysburg, N. Y. Enlisted in 10th N. Y. Cavalry, 1861, and discharged (1st Lieut.) 1865. Admitted to N. Y. Bar, 1867. Judge Superior Court 1891-1910.

[9] EMERY, EDWARD KELLOGG. Born Aurora, N. Y., 1851. Admitted to Bar, 1870 and practiced in Buffalo; Member N. Y. Assembly, 1880; Judge Erie County Court, 1896-1906; Judge Supreme Court, 1907.

expression. He had the look of an ordinary country lad with little experience in the world.

Mr. Penney, District Attorney. Czolgosz have you a lawyer?

The prisoner shook his head and when the question was repeated he gave a simple stare.

Mr. Penney. Czolgosz you have been indicted for murder in the first degree. Do you want counsel to defend you? Look at me and answer.

The prisoner remained mute.

Mr. Penney. As the accused declines to answer, I suggest that counsel be assigned by the court to advise him what to do and to defend him.

JUDGE EMERY. Czolgosz, you have appeared for arraignment in court without counsel. The law makes it the duty of the court to assign counsel for you. The Bar Association of our county has considered the matter and has suggested the names of certain men of high character for such assignment. The Court has seriously considered the question and after such consideration has concluded to follow the suggestions made by the association. The Court therefore assigns the Hon. Loran L. Lewis and the Hon. Robert C. Titus as your counsel.[10]

In the unpublished autobiography of Judge Lewis possessed by his family, he writes of the interview of Mr. Moot, President of the Erie County Bar Association, with him, to have himself and ex-Judge Titus to act as counsel for Czolgosz upon the designation of the Court as follows:

"He informed me of the action of the Bar Association. My inclination was to refuse to act and I so told Mr. Moot, but that I would consider the matter. Judge Titus was at that time out of the city. Many of my friends advised me not to undertake the defense. My sons thought I ought not to accept it. Their objections were that the trial would make serious drafts upon my nervous system. I received letters objecting to any defense being made of the assassin (see post p. 205). I was at the time 76 years old, but was in fair physical condition. Upon reflection, I concluded that it was an opportunity to teach the people of the country a

[10] The Bar Association of Erie County through its President, Adelbert Moot and Secretary James L. Quackenbush had suggested to Judge Emery that as the accused seemed to be friendless and without money, it was important that counsel should be assigned by the court of such experience and professional standing as to insure that the highest traditions of the profession would be upheld and that the trial would be dignified, just and impartial. It asked that two ex-Judges of the Supreme court who had been in active practice for many years should be selected. They were Loran L. Lewis and Robert C. Titus, whose consent to serve had been obtained by Mr. Moot.

wholesome lesson by conducting the trial in an orderly, proper manner, without any attempt to delay the trial by unnecessary subterfuges and objections. To see, of course, that the defendant had everything done to prevent his conviction that could be legally and properly done, and I concluded to act as his counsel with Judge Titus, and so informed the committee. After our designation by the court, I called at the jail to have an interview with my client. I had him brought out of the cell, informed him that I had been designated by the court to act as his counsel and that I had come over to have an interview and learn about the defense. He looked me in the eyes but made no reply. I made several attempts to get him to talk, but he uttered not a word. Finding it impossible to get any information from him, I told the officer to put him back in the cell, and left. Judge Titus and I consulted about the case. We knew, of course, that the only possible defense was to show that Czolgosz was insane at the time of the commission of the offense. We obtained the consent of the court to employ some celebrated alienists and did so. They examined him carefully and reported to us that they believed him to be sane. The trial came on lasting part of two days. At the conclusion of the evidence on the part of the people, I inquired of Czolgosz if he wished to be a witness. He shook his head and that was the only recognition that I had from him during my connection with the case. As I expected to make the principal address to the jury, and assuming that a synopsis of my address would be published in many of the newspapers in the country, and being satisfied that the jury would, of course, convict the defendant, I made up my mind to use the case as an object lesson to the people, to devote a large part of my address to discouraging the growing tendency to dispose of criminals by lynching them."

The consent of these distinguished lawyers to act as counsel for this murderer was not easily obtained. "I had quite a time," writes Mr. Moot, "in inducing Judges Lewis and Titus to serve as counsel for Czolgosz, should they be appointed by the Court, because friends of Judge Titus still thought he was a Democratic political possibility in this State; that he might still, perhaps, become Governor of the State, because he was in the State Senate when Grover Cleveland was nominated for Governor, and there was a very strong body of Democrats throughout the State who wished to make Senator Titus the candidate for Governor. As a Judge of our Superior and Supreme Courts, Judge Titus had made a good record, and so it was not unnatural for his friends to think a man of his standing, experience, ability, and good health, was still a political possibility. Consequently, these men began telegraphing him, at a Masonic gathering in Milwaukee, where he was, to refuse to act, if designated, and when he returned, I had an interview, by appointment, with Judge Lewis and Judge Titus, in the office of Judge Lewis, in which Judge Titus quite decidedly intimated that he should refuse to act. I urged that he should act, as a public duty, as a duty to his profession, and as a duty to his country, because it was all-

important that counsel for the prisoner should be so experienced, so wise, and so able, that the country would know they would have defended the prisoner stoutly, on the ground of his insanity, were it possible to find facts upon which to rest such a defense. I told him that I would be delighted to have the prisoner found to be insane, because this country would stand better in its own eyes, and in the eyes of Europe, should that be the result of the trial. I called his attention to what President McKinley had said, to the effect that the man must have been insane, to shoot him, and said those words of the President himself would be invaluable in establishing such a defense, if the facts existed upon which to establish it. I was addressing myself to Judge Titus, but Judge Lewis was listening all the time and saying nothing. At the time, I did not know that Judge Lewis's whole family, and his friends, had also urged him not to accept a designation, because the public would never forgive so ardent an admirer of President McKinley, should he defend the assassin of McKinley. Finally, after quite a long conversation with Judge Titus, Judge Lewis turned to Judge Titus and said, in substance: 'Judge, we are not cowards, and if it is our duty to defend Czolgosz, we will defend him.' Judge Titus, who had been a District Attorney, and opposed to Judge Lewis in the trial of the celebrated Manke case, replied: 'No, we are not cowards, and, if you think it is our duty to defend him, we will defend him.' They then fell into a short conversation with each other, in which they discussed the situation, and the controlling consideration with them was, that if they would not defend Czolgosz, who would, except some unfit sensationalist. Before they left the room, they promised me they would defend, if they were designated to defend Czolgosz, and then, as the President of our local Bar Association, I suggested their designation by the Court to defend Czolgosz."

September 17.

The indictment was read to the *prisoner.*

Mr. Penney. Leon Czolgosz, how do you plead?

The prisoner made no reply.

Mr. Penney. Do you understand what I have read to you? Do you understand that you are charged with the crime of murder in the first degree? You can say yes or no.

The prisoner remained mute.

Mr. Lewis said that he had called upon the prisoner and had not been able to learn any wish upon his part as to the employment of counsel; that he appeared informally to enter a plea of not guilty for the defendant, the law requiring that such a plea should be entered under these circumstances. He reserved the right, however, after con-

sultation with Judge Titus, who was then out of town, if they concluded not to make an application for the assignment of other counsel, to withdraw the plea of not guilty, and interpose, if thought advisable, another plea in the case in the way of a demurrer to the indictment. Reserving this right, he entered the plea of not guilty for the defendant.

The District Attorney moved that the indictment be transferred to the Supreme Court and gave notice that the trial would begin on Monday next, the first day of the term.

Mr. Lewis said he knew no reason why the defense would not be ready.

THE COURT granted the motion.

Mr. Lewis said that medical experts, at the instance of the People, had already examined the accused; he, therefore, wished an order permitting experts selected by the defense to make a similar examination as to his sanity.

The District Attorney said that every facility would be given the defense to do so.

THE COURT granted the order.

September 23.

The prisoner was arraigned today in the Supreme Court.

Thomas Penney,[11] District Attorney and *Frederick Haller,* Assistant District Attorney, for the People; *Loran L. Lewis,*[12] *Robert C. Titus,*[13] and *Carlton E. Ladd* for the Prisoner.

[11] PENNEY, THOMAS. Born London, Eng., 1859; Ed. at Williston Acad. Easthampton, Mass. and Yale, A. B. 1887; LL. B. 1889, Admitted to Bar, Conn. 1889; N. Y. 1890; Began practice at Buffalo: Asst. Dist. Atty. Erie Co. 1894-1897; Dist. Atty, 1897-1902; Presdt. Inter. R. R. Co. 1908-1913; V. P. and General Counsel, 1914; Resumed practice of Law 1913; Grand Master Masons, N. Y., 1916-1918.

[12] LEWIS, LORAN LUDOWICK (1825-1911.) Born Auburn, N. Y.; admitted to Bar 1848 and practiced law in Buffalo; State Senator 1869-1873; Judge Supreme Court 1883-1897; returned to practice in Buffalo and died there. Before he went on the bench he was for years the leading trial lawyer in western New York.

[13] TITUS, ROBERT CYRUS (1839-1918). Born Eden, N. Y. Grad. Oberlin Coll. Taught school and studied law; enlisted in Civil War; admitted to Bar, 1865; Clerk Erie Co., N. Y., 1865; Practiced law in Buffalo for 30 years; District Atty. (Erie Co.); State Senator; Chief Judge Superior Court of Buffalo, 1885-1894; Judge Supreme Court, N. Y., 1896-1900.

JUDGE WHITE. Czolgosz, you are indicated and charged with having committed the crime of murder in the first degree. It is alleged that you on the 6th day of September of this year unlawfully shot and killed William McKinley contrary to law, how do you plead?[14]

The Prisoner. Guilty.

THE COURT. That plea cannot be accepted in this Court. The Clerk will enter a plea of not guilty and we will proceed with the trial.

Mr. Penney. This defendant appeared in the County Court last week, and at that time Judge Emery assigned as his Counsel the Hon. Loran L. Lewis and the Hon. Robert C. Titus, and his associate, Mr. Ladd, to attend to the case and ascertain the rights that this man had and to put in such defense as to them they deemed best. They are here to attend to that in this Court this morning. I will ask Your Honor to confirm that assignment.

Mr. Titus. If the Court please, it has been thought best by my distinguished associate and myself and my young friend that something should be said, not in the way of apology, but as a reason why we are here in defense of this defendant. At the time we were assigned I was out of the city, and neither of my associates were consulted about the assignment. I at first declined absolutely to take part in the defense of the case, but subsequently it was made to appear to Judge Lewis and myself that it was a duty which we owed alike to our profession, to the public and to the Court that we accept this assignment, unpleasant though the task is for us, and we therefore appear to see that this defendant, if he is guilty, is convicted only by such evidence as the law of the land requires, and that in his trial the forms of law shall be observed in every particular and that no act or no piece of evidence shall be introduced here and accepted against him unless it is such as would be introduced and accepted upon the trial of the meanest criminal in the smallest case.

THE COURT. It certainly accords with the views of this Court that gentlemen like yourselves should have been appointed by the County Court to defend this prisoner. It gives to the public and the Court, and those engaged in the administration of the law absolute assurance that the prisoner will receive fair treatment during the progress of this trial, and that he will meet with such justice

[14] Dr. Allan McLane Hamilton, one of the experts in the trial of Guiteau (see ante p. 84) was present at the trial and says in his Recollection of an Alienist (see ante p. 3): "The prisoner was brought into court accompanied by one of his brothers. He was a tall young man with good features but bore the effects of his ill-usage for a red scar ran across his face. His was a prepossessing personality and there was none of the repulsive cunning or ugliness of Guiteau." Dr. Hamilton considered him a defective, "the reflex of the yellow journals and the fruit of months of insane brooding."

as the law demands in his behalf as he is assured by the fundamental law of the land.

The plea of "guilty" which has been entered by the prisoner, indicates as the Court looks upon it, that he himself anticipates no escape from the penalty which the law prescribes. Of course, that plea cannot be accepted, and the progress of the trial should be the same in my judgment as though he himself had entered a plea of "not guilty." I am sure you gentlemen will protect him to the same extent that you would if you were retained for a munificent compensation to do the duty which you are undertaking to do now.

Some question has been raised, and discussed in the public print at any rate, as to the jurisdiction of the County Court to appoint you gentlemen. It is my pleasure to not only confirm, but if it should be deemed necessary, appoint and designate you to the task which you have set out to perform.

The Clerk. By direction of the Court, the defendant is informed that if he intends to challenge an individual juror, he must do so when the juror appears and before he is sworn, and that the following are duly called to try the case.

The following jurors after being examined by Counsel on both sides as to their qualifications to serve were accepted and sworn: Frederick V. Lauer, Richard J. Garwood, Henry W. Wendt, Silas Carmer, James S. Stygal, Jr., William Loton, Walter E. Everett, Benjamin C. Ralph, Samuel P. Waldow, Andrew J. Smith, Joachim H. Mertens, Robert J. Adams.

Each juror stated on his examination that he had formed an opinion of the guilt or innocence of the accused but that such opinion would yield to evidence and would not prevent his giving a verdict upon the evidence introduced.

Mr. Haller. Gentlemen of the Jury: This man is before you charged with having committed the crime of murder in the first degree in the City of Buffalo on the sixth day of September of this year. It is alleged in the indictment that upon that day in this City he committed an assault upon William McKinley, and that with a revolver and fire-arm in his hands then had and held, he fired upon William McKinley, inflicting upon him a mortal wound; that the said William McKinley languished from the 6th day of September of this year until the 14th day of September, upon which last named day he died at the City of Buffalo from the mortal wound so inflicted.

I shall but briefly indicate to you the trend of the evidence as it will be presented to you. The witnesses produced by the People will show to your minds, I believe, beyond

any reasonable doubt, that for some days prior to the day on which he committed this crime, he had premeditated and deliberated upon it; that he had been informed that the President of the United States would upon the 6th day of September be at the Temple of Music in the Exposition Grounds, and that he would there receive the populace, would greet the people who came there to shake hands with him. He had been informed of that, and upon this day he went to the Exposition grounds armed, prepared to commit this assault; that whilst there he learned that the President had entered the Temple of Music; that he entered the Temple of Music with the other people who entered at the time to shake hands with the President; he got into line with the people who were passing before the President and awaited his opportunity and approached the President; that as he approached the President he had this weapon concealed in his hand; that as the President extended his hand to shake his hand, he fired the fatal shot; that he fired two shots; one shot so fired inflicting this wound that I have referred to; that he was immediately apprehended and disarmed, and has been in custody ever since; that the President was taken care of immediately by persons there with him, and was afforded all the care that could be afforded him; and upon the 14th day of September thereafter he died from this mortal wound so inflicted by this man upon that day.

These are in brief the main facts in this case. They will be presented to you by eye-witnesses, by people who were there and saw the commission of this crime, by those who apprehended and who disarmed him at the time. You will be afforded an opportunity of judging as to the position that the President occupied and the people approaching him at this time, and the position occupied by the prisoner. This opportunity will be afforded you by a diagram and photographs of the Temple of Music, the building in which this crime was committed.

This is, in brief, gentlemen, the case of the People, and I have no doubt that when the evidence is presented to you,

you will not find much difficulty in arriving at a verdict in accordance with that evidence.

THE WITNESSES FOR THE PEOPLE.

Samuel J. Fields, Chief Engineer for the Pan American Exposition, produced a ground plan of the interior of the Temple of Music on the Exposition grounds made by him on the afternoon of September 6. It showed the aisles, the arrangement of the chairs, the entrances and exits, the decorations of plants, trees and flags.

Harry A. Bliss, a photographer, produced photographs of the interior of the Temple of Music, taken by him on the morning of September 7.

Harvey R. Gaylord. Am a physician and surgeon. I performed the autopsy upon the body of the late President McKinley in conjunction with Dr. Matzinger on the morning following his death. Upon the wall of the thorax, just at the junction of the second and third rib, was the evidence of a wound in the skin. Underneath was found a surgical wound somewhat to the left of the median line. In the wall of this wound was a notch, which we were informed was what remained of the point where a bullet had entered the abdominal cavity. Directly beneath it there was a wound in the wall of the stomach. Beneath the stomach and behind it was a cavity filled with discolored fluid, and at the bottom of this cavity was a tract in which I could insert my fingers. On removing the intestines, we found that this tract where the finger entered passed downward and posteriorly into the fat in the neighborhood of the kidney; that the portion of the kidney adjacent to this opening and tract showed changes which indicated that it had been injured during life. We made careful search for a bullet; but at the time did not find any; and later, as the cause of death was established, the search for the bullet was discontinued. The wall of this cavity was formed by the fat posteriorly, the attachment of the large intestines and the pancreas; and the pancreas was seriously involved. The cause of death was a gunshot wound leading to changes in the important viscera. The condition of the other organs which were not included in this area of the wound were those which a man of the President's age should have had. They were not especially robust organs, but they were normal for a man of his condition and age.

Cross-examined. I am connected with the State Laboratory and the University of Buffalo. The wound I first described perforated the skin and had caused the destruction of a small amount of fat beneath it, but did not reach down to the muscles. We dismissed this as one of no great importance. The other was the wound that passed through the stomach. I do not think the ball had passed through any part of the kidney. A ball could have grazed it and caused injury, but there was no

loss of continuity which would enable me to say it had been perforated. I know of nothing in medical science that would have probably arrested the progress of the wound. I would not state specifically that the death of the President was due to injury in any organ made directly by the bullet. The changes caused by the bullet, which resulted from the passage of the bullet through that space back of the stomach, was what caused his death, and that was largely because of the fact that the pancreas was involved. It was caused by the absorption or breaking up of this material back of the peritoneal cavity.

An antiseptic is used to prevent the invasion of the tissues by bacteria—to kill them. It is used at the time of the interference or the operation to prevent it, and it is used afterwards to destroy organisms that were already there. Antiseptics are not used to prevent inflammation.

To Mr. Penney. Inflammation is a popular term which is applied to a large group of changes and can be produced in other ways than by that which follows infection. Antiseptics are applied to prevent that form—or not necessarily that form of inflammation, but those changes in the same tissue which are brought about by the entry of organisms into the tissue. There are other things besides inflammation which it is used to prevent also. The President died as the result of absorption of the breaking down material in this area back of the stomach. The cause of this was, in the first place, injury to the tissues and was probably further facilitated by the escape of the secretion of the pancreas into this cavity. The cause of the injury to the tissues I should attribute to the bullet. The office of the pancreas is in digestion, intestinal digestion. It secretes certain ferments which act upon the fluid which passes out of the stomach into the intestinal tract.

Dr. Herman Mynter. Am a physician and surgeon. I am connected with the Buffalo Medical College as a professor of operative surgery, also with the German Deaconesses Hospital, and the German Hospital as surgeon; formerly with the General Hospital and the Sisters' Hospital, too, as surgeon. Was called on the day of the shooting of the President to attend him. Found him on the table in the operating room. Found a bullet wound in the upper part and left part of the abdominal cavity. He was slightly under the influence of opium. I told the President that an operation was indicated at once to save his life, and he acquiesced. I made preparations immediately with the assistance of the other gentlemen present for operation of opening the abdominal cavity, called laperotomy. We agreed to wait for Dr. Mann, who was on his way, I being the only surgeon present at that time. When Dr. Mann arrived I told him that an operation was necessary at once, and that the President, if he could help it, should have the same chance for his life as if he were a laborer on the Exposition grounds. Dr. Mann asked the physicians whether they wanted him to operate. Dr. VanPeyma answered

that they wanted Dr. Mann and me. I acquiesced; told Dr. Mann I would take half the responsibility. The abdomen was opened in the line of the incision; air escaped, showing that there was a perforation of one of the hollow viscus or organs. We found a bullet hole in the anterior end of the stomach, which was sewed together with two rows of silk sutures. On account of the stoutness of the President it was difficult to get at the posterior wound in the stomach, which we judged to be present. Dr. Mann introduced his hand and tried to locate the forward course of the bullet. It showed itself to be impossible; the President's condition showed at that time shock, his pulse was getting higher, and it was time to close the operation. We washed out the abdominal cavity with sterilized salt solution, cleaned everything, put the omentum back. Previously we had examined for injuries of the intestines but found none. And at that time Dr. Park arrived. We all declared ourselves satisfied. We closed the wound with sutures and applied the bandages. The President's condition, after the operation, was fair, his pulse being about 124 to 130. He was removed immediately, before he was out of the influence of ether, to Mr. Milburn's house, where he died. A majority of us decided he ought to be removed, as he partly was under the influence of ether now and would not know it or feel it, and would not be injured, and there was no preparation in the hospital for patients to stay over night. Dr. Mann and I went with friends of ours to the house, Dr. Park and Dr. Wasdin accompanying the President. I helped to carry him up and put him in bed. That is the history of the operation. I continued as one of the attending surgeons on the President. For the first two days it was a time of great anxiety for us, as we feared inflammation of the bowels from the gunshot wound. Two days passed and the President, instead of getting worse, held his own and was improving. It was a period of great hope for us; we thought that the peritonitis, inflammation of the bowels, was not apt to occur; as two days had passed and no complications occurred, we had strong hopes that the President might recover. The next two days our hopes changed to exultation and joy. The President was evidently getting better; he was eating some food, his pulse, although it kept high, was of good volume; he had absolutely no symptoms of peritonitis, or sepsis or any other serious trouble, and as six days almost had passed, people —surgeons, who have often with abdominal operations to do, would say that in the majority of cases they would get well.

We met three times a day, Dr. Mann and I, Dr. Park and Dr. Wasdin and Dr. McBurney from New York, later Dr. Stockton was called, and Dr. Janeway and Dr. Johnson, who arrived after the President was dead.

His treatment, during that period of his illness, was the result of our joint consultation. The autopsy disclosed, first, that there there was no peritonitis present, no inflammation of the bowels; second, that there was no injury to his heart, which we

had thought there might be; third, that there was a gunshot wound of the anterior and posterior wall of the stomach, leading through a cavity and through the mesentery of the transverse colon, perforating the posterior wall, hitting the tip of the kidney and losing itself; that around the two wounds in the stomach where the sutures could be seen, and which were tight, was an area of gangrene, or total death of the wall of the stomach, about as large as a silder dollar; that the whole line of the track was in the same gangrenous condition.

The cause of death was what we call toxemia, a kind of blood poisoning from absorption of poisonous products from the gangrene, produced by the bullet wound.

The cause of death of President McKinley was this gunshot wound that occurred on the 6th day of September of this year.

When we performed the operation we could not have located the bullet without taking out all the intestines. The President would have died on the table if we had gone further. The object in locating the bullet and removing it would be to get rid of it so that it might not raise any disturbance afterwards. The X-rays were not used. It was not considered necessary. Even if we had known where the bullet was not one of us would have thought at the time of trying to remove it. Even if the X-rays had disclosed that the bullet was located in the muscles near the back or near the surface of the body, that could have been removed without very much physical disturbance, but still you might have to use cocaine and with a weak heart that might injure him. It would not have made the slightest difference either one way or another. The gangrene of the stomach would have occurred anyway. The President was not exactly what I would call a healthy person. He was a healthy person for his age, but with a rather low vitality.

It is not usual that when a person receives a wound inside, gangrene must set up. I attribute it partly to leakage of the pancreatic fluid, although to my idea the pancreas was not wounded by the bullet, but it might have got into a state of injury by simply the wave of the bullet striking it,—contrecoup, as we call it,—and in that way injury to the pancreas occurred. That is one idea. Another idea is that injury was followed with bacterial growth. That we cannot say yet because the bacteriological examination is not finished. Another thing is that the proximity of the large solar plexus, the large ganglia near the heart, near the stomach wound, might have certain deleterious influence upon the nervous system which already was weakened, and in that way favor gangrenous processes. I have bacteria and so have you in your intestines, and if that gets pierced or your stomach gets pierced, the bacteria may, alone, in that way, infect the tract. The intestines were not injured or pierced at all, simply the stomach. The pancreas perhaps itself may have become contused, although it was not strictly hurt by the bullet. In

the same way, for instance, as when I get a blow on this part of the head (the right side) my skull might be fractured on that (the left side) without that part (the right side) is hurt at all. So a violent blow on the stomach may injure the pancreas. What caused the infection? I don't know. The bacteriological examination perhaps may show you, but that is not finished.

I did not make the autopsy but was present. They tried to locate the bullet for four hours and could not find it, and at last they were told to desist. The family of the President would not have allowed them to go on any longer and would not permit them to injure the corpse any longer.

In the same way they would not permit anything to be removed for pathological examinations of the body.

It would simply have shown where the bullet was; it would not have shown this dead tissue or anything of that kind, nor the line of the bullet or indicate that there was gangrene there.

Dr. Matthew D. Mann. Am professor in the Medical Department of the University of Buffalo, and also connected with the German Deaconesses Home, German Hospital, the Almshouse Hospital, in some as attending and some as consulting gynecologist, i. e., one who has to do particularly with the diseases of women, and especially with abdominal operations connected with them. Saw the President on the table in the operating room of the Emergency Hospital on the Pan-American Grounds, a little after five o'clock. After I examined the patient and held a consultation with Dr. Mynter and some others of the surgeons, we decided an operation should be undertaken at once. Dr. Mynter, my associate, and Dr. Parmenter and Dr. Lee as assistants, we proceeded. We opened the abdomen with a knife, making an incision some three inches in length. The opening was made down to the stomach. I introduced my finger and on the front wall of the stomach found an opening. I enlarged the opening and pulled the stomach up so that I could get at this opening; then with a needle and thread I sewed up the hole according to the usual methods. The parts were washed off and returned. I then cut away some of the fatty tissue and got at the back wall of the stomach, and there we found another opening, a little larger than the one in front, the edges rather more frayed and bloody, and with great difficulty we got that up and closed that in the same way. The parts were then washed off with salt and water, and the parts returned, The surgeons present expressing themselves as being satisfied that everything had been done, I introduced my hand into the abdomen cavity to try and find the track of the bullet. This was entirely impossible. There were no evidences of blood or abdominal contents, intestinal contents, there on my hand as I withdrew it. I therefore thought there was no serious injury, no large vessels, blood vessels injured, and I desisted, especially as the manipulation with my hand in the abdomen was making the President very weak, had a very bad effect on his pulse, as it al-

ways does. To find the track of the bullet we should have had to have taken the entire intestines out of the abdomen, which would have increased the shock very much; probably would have killed him on the table; and it is doubtful whether we could have found the track of the bullet even then. The autopsy showed that we could not. After this we closed the abdominal wound with stitches, in the usual way, put on a dressing, bandages, and the President was then removed to the ambulance and taken to Mr. Milburn's. After that, a number of surgeons and physicians united in the treatment of the President, consulting. They were: Dr. Rixey, the President's family physician—a surgeon of the navy; he assumed the charge of the President and selected the staff who were to attend him; he chose myself and Dr. Mynter as the surgeons, and Dr. Wasdin and Dr. Park, and later, Dr. McBurney was called, also chosen by Dr. Rixey, and later Dr. Stockton, and two other physicians came later—too late.

We made a point that two of us should stay each night with the President, and the rest of us would meet three times a day. His treatment was the result of the joint consultation of all of us. Was present at the autopsy. We found that the abdominal cavity, intestines, were all in a perfectly healthy condition; no evidence of inflammation of the bowels. There was a point in the front wall of the stomach, which had been closed by the suture and around that was a spot as large as a silver dollar; where the tissue was entirely dead, the walls of the stomach were entirely dead. We found a similar condition on the back wall, around the other bullet hole. Below this there was a cavity which contained a lot of fluid and which showed the evidences of gangrene. In this cavity was a portion of the pancreas, as was also the fat which surrounds the kidney, and the upper end of the kidney was very near this cavity, whether it was in it or not I could not say. The cause of death of the late President was this bullet wound.

Cross-examined. The breaking down of the tissues and the condition of the body as we found it were indications not to be expected from the nature of the wound the President received; that was an unusual, unexpected condition; I have never seen anything exactly like it. The gangrenous condition of the wound is very difficult to explain; it might be due to one or several causes. It would be necessary for further investigation to be made before any adequate explanation can be made. That would be the duty of the pathologists, those that made the autopsy. I was merely a spectator of the autopsy. I have no positive opinion.

Mr. Lewis. Therefore the optimistic bulletins that were issued from time to time, by the physicians, were without any sufficient knowledge of those symptoms that were finally discovered? The bulletins which were issued were not optimistic, in that they gave no idea of what was to come; they expressed no opinion, they merely stated facts, but the opinions

that were held by the staff seemed to be fully warranted by the condition of the President. We had no reason to suspect the existence of any such state of affairs, within the abdomen. Whether they appeared in the bulletins or not, they certainly appeared in the press extensively, that the physicians were quite confident, in fact almost certain that the President would recover? Yes, that was so, in the press, but a good deal was attributed to the physicians by the press which was not always quite correct.

Mr. Lewis. You said that it was due to several causes,—can you give us any of them? Invasion of the parts by germs, the entrance of germs into the parts, might have been one cause; a very low state of vitality might have been a cause; the action of the pancreatic juice—the secretion from the pancreas, that might have been a cause, undoubtedly contributed. These germs that you speak of are present, if I understand, in all our bodies? Yes, sir. And make their work prominent when the body is in any way injured, that is, very likely to? That is true. That you expected, of course, in this case? If the operation is carefully and properly done, we can to a certain extent guard against the entrance of those germs, we cannot guard against it entirely. We guard against it by having everything absolutely clean which is used in the operation, the hands of the operator, instruments, the ligatures and material with which we sew, everything has to be rigidly clean and free from germs. Nature can take care of a certain number of germs, overcome their bad effect. We try not to introduce any more than we can help, so as to tax nature as little as possible. Are there any remedies known to the profession to be used to prevent the action of these germs? There are remedies which will kill the germs, but it is very difficult to apply them deep down in the tissues of the body, and impossible, once they get a lodgment in the tissues, impossible to dislodge them and kill them. There is nothing then that could be administered through the stomach to prevent it? Nothing at all. You spoke of the debilitated condition, I don't remember the word, of the President's body. Do you mean that there were indications that his body was in that condition before he was assaulted? The President probably was not in a very good physical condition, he was somewhat weakened by hard work, want of exercise and conditions of that kind. I think undoubtedly that had something to do with the result. You agree with the other physicians that the kidney was not actually mutilated or struck by the ball?

As well as could be determined the ball did not enter it. It is impossible to say positively, but it was injured in some way. Very possibly by concussion. Once the organ is injured then the pancreatic juice, the secretion of the gland will pass through the gland and can enter other parts. One portion of it being healthy, another part diseased, the healthy part would secrete while the diseased portion will allow the secretion to pass through it and attack other

parts. Food cannot be digested, if it does not secrete. The only duty of that organ is to aid digestion.

To Mr. Penney. Every known method of the latest surgical and medical science was applied in the treatment of the President. From my knowledge of the autopsy and the history of the case, there was nothing that would have saved the life of the President known to medical or surgical science.

Lewis L. Babcock.[15] Am a member of the Buffalo Bar. In

[15] BABCOCK, LOUIS LOCKE. Born Gowanda, N. Y., 1868. Admitted to N. Y. Bar 1890. Captain 65th Reg. U. S. V. in war with Spain, 1898. Brig. Gen. N. Y. State Guard, 1917-1919. Is now a leading member of the Buffalo bar and of the firm of Locke, Babcock, Spratt and Hollister. Writing to an army friend on September 12, when it was thought that the President would recover, General Babcock gave some interesting details of what he saw, which are not in his evidence at the trial. "Do not," he says, "let any reporter get hold of this letter as I promised the District Attorney not to talk for publication. The day was very warm and everyone was perspiring and using their handkerchiefs to wipe the sweat from their faces and hands and to compose their features before passing the President. When crack, crack, went a couple of shots almost together. I whirled around and saw the President standing perfectly still and deathly pale. In the field of my vision were my artillery-men on all sides of a young fellow with a revolver whom they pounced on like hawks on a chicken. * * * I never saw such an ugly crowd and had it been led it would have broken into the Temple and taken Czolgosz away from the few people there and lynched him. He was soon piled into a hack and by dint of fast driving and the efforts of some regulars with their rifles and a lot of Guards, hustled out of the grounds down into the city with the crowd in hot pursuit. * * * It appears he came into the Temple with a revolver in his right coat pocket bound up in a handkerchief. When about 15 feet from the President he drew out his gun with the handkerchief bound loosely around it. He had practiced, so he said, this move so that he had it down pat and so it would look exactly like a loose handkerchief. He of course was protected somewhat in this operation by the person in front of him but I imagine had his handkerchief been noticed no attention would have been paid to it as it was so common a sight that day. He expected to fire all five shots from his double-acting 32 cal. but thanks to the artillerymen he was pounced on. He never hurried or got out of his place. He betrayed no agitation whatever, but walked along directly in front of the President, brushed away the President's hand with his left hand and fired through his handkerchief with his right. Knowing that his life was forfeit as soon as he fired, he showed no agitation on his pretty face or nervousness of any kind whatever. * * * He at first planned to fire through his coat but hit upon the other scheme as more effective and surer to work. A coon claims he grabbed him, but the coon—Parker by name—in the

July was appointed a member of the Committee of Ceremonies and Grand Marshal. On September 6 an excursion was had to Niagara Falls in honor of the President, who accompanied it. I did not go, but remained to make arrangements for the reception to take place at the Temple of Music, on his return. With my assistants it was arranged so that the one door at the center main door should be opened to admit the crowd, and that the people should enter the Temple of Music, turn to the right and walk towards the stage between aisles of chairs with their backs towards the aisle and covered with blue bunting to a point some 35 or 40 feet from the pillars. In the right angle formed by these chairs I placed the decorations, palms, which obtained from the stage; also two large bay trees were placed in the angle, about 6 or 7 feet apart. I directed a frame-work to be built directly behind these bay trees which, when draped with the flag, prevented anyone seeing the President from the rear. I arranged with Major Robertson for a guard of 30 Exposition Police and with Captain Wisser for 10 artillery men.

The President arrived at the Terminal station at 3:30, and at that time the guards had reported to me and were ready for duty.

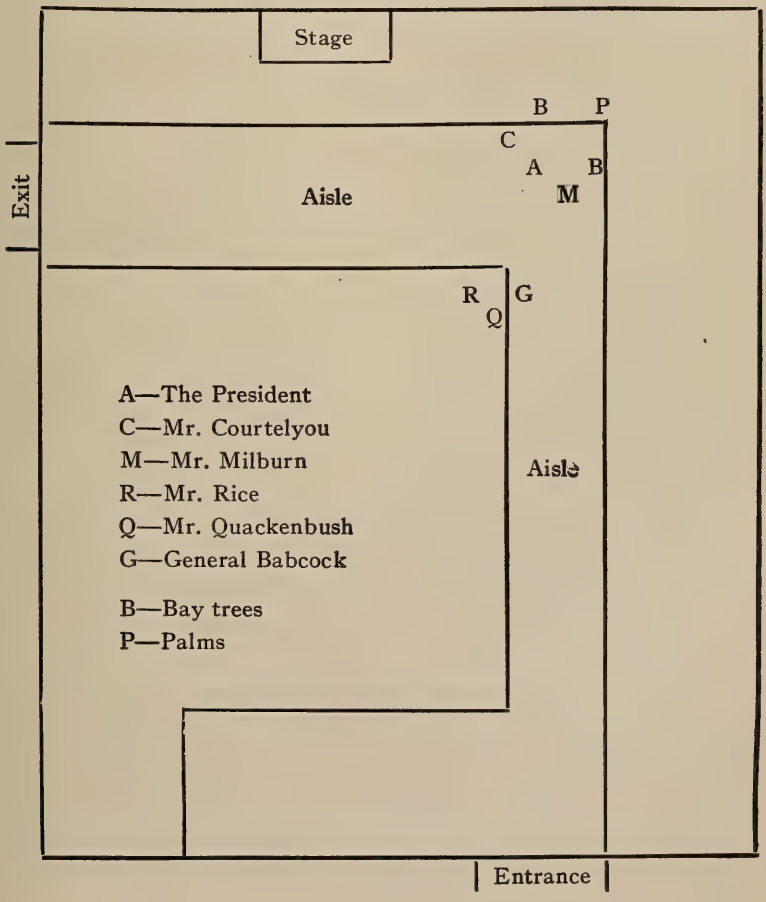
I posted two of the artillery men to the south of the south bay tree and adjacent to it, and two of the artillery men to the east of the east bay tree. I posted the other seven artillery men from a point about opposite where the President would stand along the center of the aisle towards the east, and directed them to close in to the line of people, see that no disorderly character went by the President and that the line kept moving. The Exposition guards, aside from those inside and at the entrance—about 12 or 15—were posted so that the people would pass between them.

The President reached the Temple of Music a couple of minutes before four, accompanied in the carriage by Mr. Milburn and Mr. Cortelyou. He took his place as I indicated, and close to him were two or three Secret Service men and several from police headquarters, all in plain clothes. The President nodded to me and said, "Let them come," and I at once directed a door to be opened. The crowd at once came in by twos and threes until they were forced into a single line by the guards. Very soon I was instructed to have them come faster and immediately ordered another door opened, came back and stood near the President on the other side of the aisle and

melee between the soldiers (who refused to give up their prisoner) and the secret-service men for the custody of the prisoner the coon, I saw, grabbed a Government detective, in civilian clothes, and was promptly ordered out of the Temple for his pains. Such is fame! (The coon has quit work and gone into the hero business.) The soldiers unquestionably saved the President's life. I am going to see they are rewarded if I can interest Col. Roosevelt or Cortelyou. They certainly deserve it."

watched the reception. Some one in the Presidential party—I think it was Mr. Cortelyou—said that the people were not coming in fast enough, and I again went back to the front door and directed the Exposition Guards to open another door and to let the people in by threes and fours, then to straighten them out in column of twos and a few feet further on in a column of files. Another complaint was made that the people were not coming in fast enough, and I reiterated my instructions to keep the crowd moving faster, but did not open any more doors. President McKinley at first stood between the two bay trees, but gradually worked up towards the east bay tree. Mr. Milburn was standing at his left, close to, on the same line with him and Mr. Cortelyou was at his right.

THE TEMPLE OF MUSIC



One of the Secret Service men stood directly behind and another directly in front of him, not more than three feet away, and the other detectives were stationed south of the President. I am quite positive that was their position sometime before the President was shot, but their precise position at the exact instant of the attack on him I am not able to state. There was no change in the position of the artillerymen up to the attack save that I took one artilleryman from where I had posted him on the south side of the aisle and moved him further east to assist in hurrying up the people. A few seconds before the shots were fired Mr. Rice spoke to me and told me in substance that Mr. Cortelyou was about to give the signal to close the reception. Mr. Rice was standing about opposite the President and southeasterly from him on the outside of the south row of chairs. He was not in the aisle. Mr. Quackenbush was standing near him and both were looking towards the people whom the President was shaking hands with. I told Mr. Rice that when Mr. Cortelyou said to cut off the reception to give me a signal and I would immediately shut the doors. I then turned from a position almost in front of the President and passing behind the artillerymen walked up the south side of the aisle towards the easterly entrance of the Temple of Music. I had taken probably five or six steps when I heard two reports of a revolver. The reports sounded somewhat muffled and not as a revolver would normally sound in an inclosure like that. I instantly turned around and looked first at the President, who as far as I could see, was standing perfectly still. In the field of my vision I could see the artillerymen, or a large proportion of them, struggling with a man who had a revolver in his hand. Quicker than I can describe they bore him to the floor by force of their numbers, and rushing back I saw some soldier—but who I cannot say—wrest the revolver from his grasp. The artillerymen attacked the man with such violence that I could not get anywhere near him myself. I am quite certain that at least 8 or 9 of these artillerymen pounced upon this man and bore him to the ground. I am quite sure that there was no one in the pile other than the soldiers and the President's assailant. After they got the revolver away from him they retained their grasp on him, but let him struggle to his feet, and then Foster grasped the assailant by the throat and struck him in the face. Just before the attack I observed a negro, whom I learned was employed in the Temple of Music, standing north of the aisle and outside of it, apparently watching the reception. I asked one of the guards who he was and what business he had there, and was informed that he was an employe in the building. I saw no other negro at any other time during the attack or after it. I at once rushed towards the President, who was immediately led away some 15 feet to a seat which was standing in one of the old aisles of the Temple of Music. A section or so of the chairs forming the west aisle

was pulled away and the bunting was torn down by several people; I assisted in this. The President sat down. I did not hear him say anything nor did the prisoner appear to utter a word. The prisoner was taken by the Secret Service men and the detectives away from the soldiers who were holding on to him and into Mr. Henshaw's office in the Temple of Music. I do not remember to have seen the prisoner prior to the assault, but I am positive that the man who was arrested was the man who did the shooting, for the reason that I saw the revolver taken away from him.

In a few minutes the President was taken in an ambulance to the Exposition Hospital. Corporal Berchey of the Artillery handed the revolver to Captain Wisser. I was continuously present in the Temple of Music or on the steps of it until the arrival of the District Attorney. Just after the shots were fired and during the struggle to secure the prisoner, his nose began to bleed quite profusely and there were various spots of blood on the floor about where the struggle occurred. Although I looked I could not find that the President shed any blood in the Temple of Music.

Edward R. Rice. Was chairman of the committee on ceremonies for the entertainment of the President. I stood directly opposite the President, just over the line of chairs. It was my duty to decide when the ceremonies should conclude. I stood at the point indicated to get a signal from Secretary Cortelyou as to when he thought the ceremonies should close. The line had been passing a trifle more than ten minutes. I took my watch out indicating to Secretary Cortelyou that the time we had agreed upon was about up and he took out his watch indicating that he understood. Almost immediately I noticed the President's hand go forward towards the next person in line; then a line of white pushed towards the President from the person that was about to shake his hand and one or two quick reports, so quick you could hardly distinguish one from the other. The thought in my mind was that some one had concealed a revolver in a newspaper. Immediately after the people about there all fell in a mass, I ran towards the east door where the people were coming in, calling out, "close the door and clear the aisle." Then I came back and noticed the President had been removed to the chair in the aisle leading towards the stage.

James L. Quackenbush. Am an attorney and counselor at law and was a member of this committee of which Mr., Rice was chairman; was standing to Mr. Rice's right and directly opposite the President, south of the line of chairs forming the aisle and resting my left foot on one of those chairs. I heard two shots fired very close together; looked towards the President and saw him straighten up. At once the artillerymen on the left of the President lunged forward towards prisoner and at the same instant Mr. Gallaher, who had been standing at the right of the President, a little to his rear, plunged forward and practically about the same time

these men caught prisoner. I saw for an instant just a glimpse of something white as Gallaher lunged towards him. He went to the floor and on top of him a number of the artillerymen. At the time the shot was fired, directly in front of the President and facing him were standing Foster and Ireland of the Secret Service, and immediately back of them and standing in a line along the line facing the President were artillerymen and their corporal. To the left of the President was standing Mr. Milburn and to his left two artillerymen, O'Brien and Neff; directly behind the President was Mr. Geary of the Buffalo headquarters detective force. Immediately to the President's right was his secretary, Mr. Cortelyou, and a little back of him or near him stood Mr. Gallaher and Mr. Solomon of the Buffalo Headquarters, and to their right were two other artillerymen, arranged just a few feet from each other. It seemed to me as though this entire mass went down in a heap on the prisoner.

He came up standing in the grasp of several of these men. He was then struck a blow by Mr. Foster which sent him to the floor again, and he bled somewhat from the face. He was then taken to the room of Mr. Henshaw.

In the meantime the President had been assisted by Mr. Geary and Mr. Milburn to a chair. Some gentlemen fanned him until an ambulance came and took him away.

After the prisoner had been taken away and statements had been taken from the artillerymen I accompanied Mr. Penney to headquarters where the prisoner made a statement in my presence with reference to his part in this crime. There were no threats or inducements made or offered to him; whatever he said appeared to be voluntary. This was between ten and eleven o'clock the night of the shooting. He was seated at the table in an inner office. There were present detective sergeant Geary, detective sergeant Solomon, inspector of police Donovan, superintendent of police Bull, assistant district attorney Haller, the stenographers, Mr. Storey and Haggerty and Mr. Ireland of the secret service, the district attorney himself and assistant superintendent of police Cusack. When we entered the room Mr. Haller handed to the District Attorney some memoranda which he had, and Mr. Penney proceeded to talk with prisoner about what he had done. I know nothing of what took place before this time. He replied to questions by the district attorney, stated that he had killed the President because he believed that it was his duty; that he understood the consequences and was willing to take his chances. He described in detail in a conversation over about two hours, his movements during the day of the shooting and for some time previous; he showed how he concealed his revolver and how he fired the shots. He stated that he had gone to Niagara Falls on the morning of the day of the shooting with the intention of shooting the President at the Falls, but that he was unable to carry out his purpose there, not being able to get near enough to the

President. That he took a street car from Niagara Falls to Buffalo, transferred to a car going to the Exposition Grounds and went to the Temple of Music with the purpose of shooting the President; that he waited outside in the line, that he placed his revolver in his right hand, covered it with his handkerchief, placed his hand covered with the handkerchief and holding the revolver in his right hand pocket, and stood that way while in the crowd outside of the entrance to the Temple, and as he entered the Temple, but that when he got to the point where the people were singled out in single file, he took his right hand from his pocket and held the hand covered with the handkerchief across his stomach until he reached the President, when he fired. He said had he not been stopped he would have fired other shots. That he had been thinking about killing the President for three or four days prior to the time of the shooting, that he fully determined that he would kill the President the day before the shooting.

He said he did not believe in government, that he thought the President was a tyrant and should be removed. That the day before the shooting when he saw the President in the grounds he thought that no one man should receive such services and all the others regard it as a privilege to stand by and render services; that he had for several years been studying the doctrines of Anarchy, that he believed in no government, no marriage relation, and that he attended church for some time but they talked nonsense and he discontinued that; that he did not believe in the marriage relation, that he believed in free love. He gave the names of several papers which he had read, Polish names which I cannot recall, four of them, and he mentioned one known as Free Society. He mentioned places that he had been to where he had heard these subjects discussed, places in Cleveland, Ohio. Before he came to Buffalo he had been in Chicago; had been influenced by the teachings of Emma Goldman and another woman living near Cleveland, whose name I do not recall. For the first half hour he was answering questions that were put to him in a brief manner. He seemed to be cool and not excited or disturbed in any way. He seemed to be suffering some pain and constantly applied a handkerchief to the side of his face where he was struck in the Temple of Music and complained that his eyes hurt him. I asked him a few questions myself and later when the District Attorney was engaged in consultation with Mr. Haller, Inspector Donovan and Detective-Sergeant Matt O'Laughlin, sat by him and he told them about his place of birth, his bringing up in Alpena, talked about the lumber camps in Alpena and about his movements from that time until the time he got to Cleveland and went to work in the wire-mill there, about his father's farm, and in a perfectly easy and conversational way. Without replying to questions at times he volunteered information.

I asked him to make a statement for publication as to his reasons. He said he would; he

started to write it but his hand shook and he said he would dictate it to the reporter and he did. I would prefer to refresh my recollection about that from a memorandum I have if I could be permitted. Looking at this statement it refreshes my recollection so that I am able to state what it was: "I killed President McKinley because I done my duty. I didn't believe one man should have so much service and another should have none." This statement he signed. This he made for publication. He made in addition to that a statement of two hours' duration. At times he volunteered in the true sense; he went beyond giving responsive answers. In response to questions he stated more than the question called for.

He said he was born in Detroit, Michigan; that when he was quite young his parents removed to Alpena, Michigan; that he went to school there, both to the public and the parochial schools. That afterward, when he was young, his mother died, that his father married again; that they removed to Cleveland; that he worked at one time as a blacksmith's helper; that subsequently he worked in the wire works near Cleveland; that his father lived on a farm near Warrensville, Ohio, some distance out of Cleveland; that he lived on his father's farm for some time but that he, as he put it, didn't like the style of his father and step-mother and left them; said that he didn't have any quarrel but that he didn't get along and that he left there. Asked what he had been doing for the last two or three years, he said he had saved up $400 from his earnings in the wire works, $100 of which he had given to his father; that he had supported himself out of the remaining $300 and had been working from time to time; that he had been to Chicago just before coming to Buffalo, came directly from Chicago to Buffalo, arriving here on Friday previous to the day of the shooting of the President. The President arrived in the city on Wednesday evening, was at the Exposition Grounds on Thursday, went to Niagara Falls Friday morning. He said that he was at the Grounds at the time of the arrival of the President, during the ceremonies on the day before the shooting, and with the intent of shooting the President but that he got no good opportunity.

He told about having attended a lecture in Cleveland at which Emma Goldman spoke. He gave the number of his family, saying that he had seven brothers; that they were living in and about Cleveland. He semed absolutely willing to answer any question which was asked him, without hesitation. I now recall that in addition to those who were present during the time of this conversation there was Dr. Fowler, a surgeon to the police; and that later in the evening Dr. Fronczak, a physician of this city, and I think also a lawyer—at least he was in the Law School—and who speaks the Polish language, came in and had a conversation with the defendant in the Polish tongue, which he repeated, in substance, to those present, in English. He said that he was entirely alone; that nobody assisted him in any way; that he

conceived the idea, planned the method and manner of carrying it out, upon his own responsibility; that he understood the consequences of such an act and was willing to take his chances, and that he wanted a fair trial.

Mr. Titus. You said that he made the statement that he was an anarchist. I don't think I made quite that statement. What he did say was that he didn't believe in any government, that he didn't believe in rulers; he thought that all rulers were tyrants and should be removed and that he had done his duty in removing the President. The District-Attorney, on several occasions, used the word "anarchy" and talked with him about anarchists of note, mentioning them by name; asking him if he knew them. Whether he himself used that precise term or not I would not state positively.

Did he say anything upon the subject as to whether it was his duty, belonging or owing allegiance or believing in that society, to slay the heads of governments; did he say anything upon that subject? He did not put it on any ground of allegiance, but on the ground of belief, and he claimed that was the result of his own individual theorizing and reflection; not that he used those terms but that is the substance of it.

Mr. Penney. Theorizing on what subject? On the subject of government and forms of government. In connection with that did he speak of the lectures and speakers that he had heard? Yes sir. The things that he had heard at these places, that he was meditating upon? Yes.

Albert L. Gallaher. Am a United States Secret Service agent; was with the President's party when he came to Buffalo at the time the shooting occurred. Was standing about eight or ten feet to the President's right. My duties were to keep the crowd moving along, after they would shake hands with the President, to see that no one would turn back or stop or blockade the procession. I heard two shots, fired in rapid succession. I looked, I saw smoke coming up from something white in a man's hand. At that instant I shot past, jumped on this fellow, crushed him down. It seemed like I struck the floor before I got to him. I bruised myself considerably on the knees going in. He was lying on his right side. I heard Fostera's voice say to me, "Get the gun, Al, get the gun." Laying out at prisoner's right hand was a handkerchief, blazing. I grabbed both. Some one at that instant took the gun from me, knocked it either from my hand or grabbed it quick. I held onto the handkerchief and burned my hand with it. (Witness produces from his pocket-book the handkerchief and hands it to the District Attorney.) When I got through with that tussle I looked around; I saw nothing of the man, but saw the President sitting a little to the left of where he was standing. Just then Mr. Cortelyou came to me and asked me for the gun. I told him I didn't have it but I located it in the possession of Corporal Lewis Bertschey. The next time I saw prisoner was in the little ante-room, his nose was bleeding. I made the re-

mark before they took him out, they had better wash the blood off his face.

George F. Foster. Am connected with the Treasury Department, Secret Service Division. Was in the Temple of Music at the time of the shooting. Mr. Milburn stood directly to the left of the President and I stood almost in front of Mr. Milburn. It was my place to get on the inside of the circle and keep them in line and to size up every person as they came along, which I generally did; and this man came along. They were as close together almost as my fingers passing here, and shuffling along and looking about to see when they were going to get up to shake hands with the President. This man came along and I looked him right in the face and he looked at me. He went right along. I paid no attention. I thought he was a mechanic out for the day to do the Exposition and wanted to shake hands with the President. Had noticed Mr. Cortelyou a few minutes before with his watch out, and that was a sign to me that the thing was going to be shut off very quickly. I turned slightly, kind of looked around to see Mr. Cortelyou, and as I looked around I saw the fellow put his hand that way. It went "bang, bang," almost as quick as that. There was an instant's pause and I grabbed him. Somebody on the other side of him pushed him, and as I twisted him another person came from the right of me and we fell on him together on the floor. I tried to strike him as I was going down, but I don't think I hit him very heavy. But he got in a twist then looking back this way at the President. As he fell he was twisting from the President, and he had his hand on the floor looking back like as if he was trying to see what effect it had had on the President. Just then I saw Gallaher sliding underneath. I said to Gallaher to get the gun, and he puts his hand down that way over the gun and handkerchief. I looked around and I saw we had him secured and I gave the order to let him up. When he got up I said, "We will search him." I just started to put my hand in his pocket, and just then he looked over his shoulder to see what he had done to the President, and it made me so mad I smashed him right in the jaw. I went with the President in the ambulance; was there when he was undressed; there was a bullet found in his clothing which I have here. (Witness produces bullet.) This was the bullet that was taken from the President's clothing after the shooting in the hospital. The President called my attention to it when he was in the wagon. He said, "I believe that is a bullet," and he reached around in his shirt; and I said "Yes, that is a bullet, Mr. President"; and it fell out when they were undressing him.

Cross-examined. In the line I could not say positive who was in front of prisoner or who was behind him. I noticed in the line several little girls but I can't tell exactly whether they were in front of him or not. I noticed a dark complexioned man with a black moustache in line, think he was ten feet in front of him. In fact I put my

hand on his shoulder and passed him past the President. I didn't like his general appearance. And I motioned to Gallaher to take care of him after I left him. I noticed a colored man in the line but it seems to me he was in front of this man; I never saw no colored man in the whole fracas.

Francis P. O'Brien. I belong to the Seacoast Artillery, 73d Company, U. S. Army. Was one of ten men detailed to do escort duty in the Temple of Music at the time of the shooting. I stood right to the left of Mr. Milburn and he was on the left of the President. Well, I was standing there; everybody was coming in and I was keeping them in line. I went out to Mr. Foster and he was putting them in line, single file. They were not coming straight. I went back to my place and there was such a crowd coming that we had to keep them moving. I kept looking down at the President; could hear him passing a remark to each and every one that passed by him. Could hear him distinctly, they were coming along there. It wasn't two seconds that I got in the line until I heard the shot. I was looking directly that way. I was looking at the President. Yes, sir. Right at him. I heard the report, and I was kind of dumbfounded. I couldn't understand it, and then I heard another bang. I could see the smoke. There was an opening there, and I jumped at that man there. Saw the smoke coming right from his hand. I jumped at him and knocked him over against somebody. When I knocked him he didn't go down until I made a grab for his arm and took the revolver, which I turned over to the corporal of my detail. This is the revolver I took from the hands of this prisoner.

Louis Neff. Was detailed with the 73d Company here to attend the President at the reception on the 6th of September last at the Temple of Music. I was stationed on the oppsite side of the President about four yards on his left. Two shots were fired, one right after another, and I looked right across into the line and here was the pistol. It was up this way (indicating); and I put my one hand this way and tried to get hold of it myself. I seen I couldn't do any good, and I thought I would break the hold. I saw one of our men had a good grasp right over what you call the chambers. I saw another artilleryman had it. I saw I couldn't get it, and I beared down on the man's hand here, grasping his hand close up this way, and I fell on my knee. I paid no more attention. I thought if we got the revolver they could take care of the prisoner. Will swear it was in his right hand. I didn't see the prisoner at all. I saw him after. I recognized the man afterwards, but I couldn't recognize him in the crowd. I only saw somebody's hand with a revolver in it and I tried to get it.

Louis Bertschey. Am a corporal in the 73d Coast Artillery, stationed at the Pan-American Exposition this summer. Was detailed to take command of men to go to the President's reception. Ten privates. We were ordered to report to Major Babcock and he told me how to sta-

tion the men. Major Babcock ordered me to put two men on the right of the President, two on the left, and six men directly in front of the President. I myself took a station directly in front of the President. He faced me. After the crowd commenced to come in we closed up to make the aisle narrower and keep the people in single file. In about five minutes, I should think, after the reception had begun, I heard two shots fired out in rapid succession. I turns around and see the prisoner with a revolver in his hand and his hand up in that direction (indicating). It was smoking—something white covered partly over the revolver. I rushed over to the President—I grabbed the man by the shoulders and pulled him backwards. Previous to this O'Brien and Neff had ahold of his arm. As I pulled him over backwards, O'Brien wrenched the pistol from his hand and we all fell to the floor. I put my right knee on his throat, my hand underneath his coat. And the crowd rushed in. I hollered to the crowd to stand back as he was my prisoner. There was some gentleman with a silk hat grabbed hold of me from the rear and carried me over and forced me over to the opposite side of the railing. He let go of me. I saw the President standing there—he was very pale—looking down at the struggling mass on the floor.

Saw O'Brien. He was backed off with one or two, possibly three, Secret Service men demanding the pistol from him. I goes over to where he was and told him not to give up the pistol. He said then he would give it up to me, and some of the Secret Service men demanded the pistol from me. I would not give it up, stating that I would turn it over to my commanding officer. That was Captain Wisser. I sent a messenger to notify him. He arrived in about fifteen minutes and I turned the revolver over to him. Before turning it over I put my initials on it. (Mr. Penney hands revolver to witness.) That is my initials. This is the same revolver Private O'Brien turned over to me.

Harry F. Henshaw. Am Superintendent of music of the Pan-American Exposition and have charge of the Temple of Music. At the time of the shooting was about five feet to the right of the President. Had in view the line of people as they came up towards the President. I could also see the President very well. I noticed this man, the prisoner here, in the line approaching the President; noticed he carried his right hand above the abdomen, close to the body, bent at the elbow. Noticed the hand was bandaged but did not pay any more attention to it. As he drew near the President he extended his left hand to the President. I saw the President extend his hand as if to shake hands with him, when like a flash I saw this man push the President's hand aside with his left hand—and kind of pushed forward. At the same instant two shots rang out in quick succession. I did not see any flash from the gun, but I saw the handkerchief or bandage smoking. I jumped over the rail and, as I was getting over, noticed two artillerymen or two

soldiers had grabbed this man and were bearing him down. At the same instant there was a dozen or more who crowded around and struggled to get at the man also. When I got to the bunch I could see nothing of the prisoner. Saw Mr. Milburn and some other gentleman escorting the President to a seat. I followed and I saw the President seated. I saw some guards carrying prisoner to my office.

Cross-examined. I saw prisoner appraoching with his hand up at his breast or abdomen. I thought the hand was simply sore and bandaged. Did not see the pistol; his hand did not excite my suspicion. I saw people with handkerchiefs in their hands; capes over their arms.

John Branch. I had charge of the toilet rooms in the Temple of Music. On this occasion when the shooting occurred, I was about eight feet left of the President, outside of the aisle. This man he got near me and I noticed a handkerchief in his hand. I seen him when he put his hand like this in his pocket (indicating) and it came out and his hand was in like that. He had his hand like that on his waist; his other was over his abdomen. When he got near the President it seemed as though he meant to shake hands with the President, and somehow—how he done it I don't know exactly—but anyhow he looked as if he meant to shake hands with the President; but I saw a report and the fire, and then I saw the second report and the fire, and I saw the handkerchief on fire; and then after that I saw the man when they began to get this man. I heard someone say, "Oh, they have shot the President." An artilleryman got him first, and at that time the man was almost about going down in the crowd, and one of the artillerymen grabbed him by the leg. At that time the man was on the ground. Then I turned to see the President. That is all I saw of the shooting.

Mr. Titus. Did you hear the President make any remark or say anything? When the President jumped after the second fire, from one of those big tubs the trees were in, and staggered over to the second one and then stood up, I heard him say, "Be easy with him, boys." That is all I heard him say.

Captain James F. Vallely. Am Sergeant of detectives, New York City, and have charge of the detective bureau at the Pan-American Exposition. I went with prisoner from the Pan-American Exposition to Police Hearquarters. I took him up to the cell at Police Headquarters, Buffalo.

I sat alongside of him in the cell on the cot, where the prisoners sleep. I said to him, "Do you smoke?" He said "Yes, sir." I handed him a cigar and lit it for him and lit one myself. I asked him for his name. He said "My name is Fred Nieman." He speled it "N-i-e-m-a-n". I then asked him how old he was. He said "28." I said "Where were you born?" He said "Detroit, Michigan." I said, "Where were your parents born?" He said, "I am a Polish German." I said, ""What do you do for a living?" He said, "I am a blacksmith." I said, "How long have you been in Buffalo?" He said,

"Since last Saturday." I said, "Where do you live?" He said, "1025 Broadway." I said, "What is the number of your room?" He said, "The room I think is No. 8." I said, "Why did you shoot the President?" He said, "I only done my duty." I said, "Why?" and he and I were sitting together on the bench where the prisoners lay, and he turned his head and looked at me and he hesitated. I said, "Are you an anarchist?" He said, "Yes, sir." That is all the conversation I had with him. There were present in the cell with us detective Solomon and the assistant commandant at the Exposition, Major Robertson.

William S. Bull. Am Superintendent of the Buffalo Police Department; was present on the night of September 6th when prisoner was at headquarters. Heard him make certain statements in reference to the shooting of the President. No threats were made to him or offers of immunity of any kind. No inducement held out to him. He said he knew Mr. McKinley, the President, that when he shot him he knew who he was shooting, that he shot him because he believed it was his duty to shoot him; that he had been to the Pan-American Grounds on several occasions prior to the President's visit to Buffalo; that he was on the Exposition grounds the day the President delivered his speech, and stood near the speaker's stand; that he went there with the determination to kill the President. He did not intend to kill him the day that he delivered his oration. He knew the President was to visit Buffalo and be at the Exposition. He knew that the President was going to the Falls and that he went to the Falls the same day the President was there. He did not intend to kill the President at the Falls. He knew the President was to hold a reception in the Temple of Music, and he intended to be present at the reception, and he was there; that he took his place in line with the other people who were attending the reception, for the purpose of killing the President. He carried his revolver in his right hand pocket and over it was his pocket handkerchief, and in describing it he illustrated it. The gun was in the pocket, the pocket handkerchief over it, and he did not remove the gun from his pocket until he was within the Temple of Music; he then took the gun and handkerchief together from his pocket, the gun being concealed, and as he went into the door arranged his handkerchief so that the gun could not be seen, carried his hand in this position with the fore finger of his hand upon the trigger. He passed along with the other people until he reached the President and the President was about to extend his hand to him, when he fired twice. Asked why he didn't shoot more, he said because he didn't have the opportunity, they fell upon him so suddenly, so quickly, and bore him to the ground that he had no opportunity to fire again. This statement he repeated upon several different occasions, and practically the same as the statement he made the first time that I talked with him.

He said that he had had it in

contemplation for some time. That he had planned the shooting, knew what he was going to do, had firmly made up his mind to kill the President, and went to the Exposition grounds for that purpose; that he did it because he thought it was right, it was his duty. He was asked if he was an Anarchist, he said that he was, that he believed he was doing right in killing the President. He said he had taken up the subject of Anarchy about seven years ago; that he was 28 years old, and when he was 21 he began to take up the subject of Anarchy. The papers that he had read had been principally Anarchistic papers, Socialist papers, and books relating to the subject of Anarchy. He had also attended meetings in different places, heard various people talk upon the subject of Anarchy, and he believed what he had heard and what he had been told, and believed that he was right. Most of the meetings he attended were in Cleveland, at 170 Superior street, but sometimes he used the word "Ontario street," and sometimes "Superior," but I think the number was 170 Superior street.

He had heard Emma Goldman talk, he had heard—well there were some names—I think a man by the name, something like Zolosman, a Polish man, a man who edited a paper in Cleveland, and a number of other speakers. He also knew a man in Chicago by the name of Izaak, who published a paper called "The Free Society." He had talked with this man upon the subject and had read his paper. He told me that he made a special trip to Cleveland at one time to buy a paper that was published there, as he wished to read it.

He did not believe in our form of Government, he believed only in the government as taught by the Anarchists. He had no belief in church. He had been a Roman Catholic, but had had nothing to do with the church in some time because he did not believe their teaching. He did not believe in marriage, he was a free lover. He told me of his father and mother; his father had been married a second time; that they lived near Cleveland at a place called Warrensville. His father had a small piece of ground that he used to farm. He had several brothers and sisters, that he had worked in the wire works near Cleveland; had also worked as a laborer and as blacksmith helper at different times; he said he went to the Exposition Grounds for the express purpose of killing McKinley the President. That he knew him, that he had seen him before, and that when he shot he knew he shot the President, he intended to kill him.

Cross-examined. When he was searched there was some scraps of paper and a memorandum book and $1.51 was handed to me that he said belonged to him. Of the $1.51 there was a shirt and some handkerchiefs and I think a collar bought out of it. One paper had a memorandum on it, an address, and there was a memorandum book and I think also a letter from the secretary of some society that he belonged to, I think the Golden Eagle, a sort of letter of identification. They were turned over to the District Attorney.

His head was erect and he

looked me in the eye and his language was intelligible. He spoke with a very slight accent and sometimes without any accent at all, and used comparatively good language. He did not volunteer any answers, he answered the questions that were put to him, and sometimes after he answered a question he would correct it.

To Mr. Penney. On Saturday morning a man named Walter Nowak came to Police Headquarters, met the Assistant Superintendent, Mr. Cusack, and said he would like to see this man, he thought he knew him. Nowak was brought into the private office of the Superintendent of Police and immediately recognized Czolgosz, and said he knew him in Cleveland. He said he was employed in a printing office in Cleveland, that Czolgosz was there and they got quite friendly, and that he knew his family. He said to him "You know me well, Czolgosz, I have always been a friend of yours. Why did you do this? Why did you commit this crime? Why have you committed an act that is going to bring disgrace upon the Polish race? Why have you committed this c r i m e that brings disgrace on your father and mother and entire family?" The conversation was in that strain for some time, to which prisoner made no response but simply smiled. Nowak asked him if he hadn't always been his friend. He said "I don't know whether you have been a particular friend of mine or not." Nowak said then, "Haven't I taken you to the theatre frequently?" "Yes, you have taken me to the theatre on several occasions; I don't know as that is any particular act of friendship." He said, "You and I belonged to the same society, attended the meetings together, but it became so radical, the talk was so radical I gave it up, I couldn't stand for it, I wouldn't listen to it."

Nowak also says, "I am a Republican, I am not a Socialist or Anarchist, I am a Republican." The prisoner says, "Oh, yes, you are a Republican for this (indicating with his fingers)." Mr. Penney asked him "what do you mean by that?" He said "I mean by that that Nowak is a Republican for what there is in it, the money he can get out of it."

He was asked if he wished to see a lawyer, and if he had any friends he would like to see, if he wished to see his father or his mother. He said he didn't wish to see a lawyer, didn't need a lawyer, that he had no friends and did not care to see his father or mother.

Mr. Penney. The People rest.

Mr. Lewis asked Czolgosz if he would go on the witness stand. The Prisoner shook his head.

Mr. Lewis. If your Honor please, the defendant has no witnesses that he will call, so that the testimony is closed at the close of the testimony of the People. We are somewhat

embarrassed, disappointed, in the People's testimony closing at this point. My associate and myself have not had very much consultation as to the course to be pursued, but from the slight conversation that we have had we are inclined to ask your Honor to permit both of us to make some remarks to the jury in summing up this case. They will be on my part very brief, and I presume so on the part of my associate.[16]

[16] The question of the prisoner's sanity was not raised by the defense for the following reasons:

Within a few hours after the crime was committed the District Attorney placed the prisoner under the observation of three experts in mental disease, Dr. Joseph Fowler, Police Surgeon; Dr. Floyd S. Crego, Professor of Insanity and Brain Diseases in the University of Buffalo, and Dr. James W. Putnam, Professor of Nervous Diseases in the University of Buffalo. Later (see ante p. 168) on the application of the counsel for the defense and with the free consent of the District Attorney, two eminent experts who had been brought to the city by the defense and whose fees were paid by the prosecution, were permitted to have free access to the prisoner for the purpose of passing on his mental condition. These were Dr. Carlos F. MacDonald, Professor of Mental Diseases and Medical Jurisprudence in the University and Bellevue Hospital Medical College and ex-President of the New York State Commission in Lunacy, and Dr. Arthur W. Hurd, Superintendent of the Buffalo State Hospital for the Insane.

The experts on both sides had free access to him for several weeks, both those for the People and the defense, conferred freely together and the proceedings had the effect of a commission of five, three for the prosecution and two for the defense, to determine the prisoner's mental condition. They unanimously reported him sane.

These reports, which were not put in evidence at the trial, are as follows:

Report of Drs. Joseph Fowler, Floyd S. Crego and James W. Putnam, experts for the People.

The early opportunity afforded us to examine Czolgosz, such examinations beginning but a few hours after the commission of the crime, while he was still uninformed of the fate of his victim or had time to meditate upon the enormity of his act, aided us materially in our work.

The prisoner answered questions unhesitatingly during the first three examinations. After this he became more cautious and less communicative when interrogated as to the crime. From September 10th he never volunteered any information to us and answered only in monosyllables except to his guards, to whom he talked freely. His general appearance was that of a person in good health,

Report of Dr. Carlos F. MacDonald[17] *and Dr. Arthur W. Hurd, experts for the prisoner.* "On September 19, 1901, I, Dr. C. F. MacDonald, received a telegram resquesting me to meet Mr. Adelbert Moot, President of the Erie County Bar Association, in Buffalo,

complexion fair, pulse and temperature normal, tongue clean, skin moist and in excellent condition. Pupils normal and react to light; reflexes normal; he never had serious illness, does not drink to excess, although drinks beer about every day; uses tobacco moderately, eats well, bowels regular. Shape of the head normal as shown by the diagram obtained by General Bull, Superintendent of Police, with a hatter's impress.

The face is symmetrical; one eyebrow was elevated as it had been cut some years ago by a wire while he was working in a factory. There was also a small scar in the left cheek due to a slight injury while at work.

At our first interview, held September 7th, he made the following statements during a lengthy examination by all of the three examiners:

"I don't believe in the Republican form of government and I don't believe we should have any rulers. It is right to kill them. I had that idea when I shot the President and that is why I was there. I planned killing the President three or four days ago after I came from Buffalo. Something I read in the Free Society suggested the idea. I thought it would be a good thing for the country to kill the President. When I got to the grounds I waited for the President to go into the Temple. I did not see him go in, but someone told me he had gone in. My gun was in my right pocket with a handkerchief over it. I put my gun in my pocket after I got in the door; took out my gun and wrapped the handkerchief over my hand. I carried it that way in the row until I got to the President; no one saw me do it. I did not shake hands with him. When I shot him I fully intended to kill him. I shot twice. I don't know if I would have shot again. I did not want to shoot him at the Falls; it was my plan from the beginning to shoot him at the Temple. I read in the paper that he would have a public reception. I know other men who believe what I do, that it would be a good thing to kill the President and to have no rulers. I have heard that at the meetings in public halls. I heard quite a lot of people talk like that. Emma Goldman was the last one I heard. She said she did not believe in government nor in rulers. She said a good deal more. I don't remember all she said. My family does not believe as I do. I paid $4.50 for my gun. After I shot twice they knocked me down and trampled on me. Somebody hit me in the face. I said to the officer that brought me down, "I done my duty." I don't believe in voting; it is against my principles. I am an anarchist. I don't believe in marriage. I believe in free love. I fully understood what I was doing when I shot the President. I realized that I was sacrificing my life. I am willing to take the consequences. I have always been a good worker. I worked in a

New York, on the following morning. On my arrival in Buffalo the next day Mr. Moot informed me that he had sent for me for the purpose of requesting me to inquire into the mental condition of Leon F. Czolgosz, confined in the Buffalo jail under indictment for the murder of President McKinley, and whose trial was to begin on the following Monday. Mr. Moot further stated in substance

wire mill and could always do as much work as the next man. I saved three or four hundred dollars in five or six years. I know what will happen to me—if the President dies I will be hung. I want to say to be published—'I killed President McKinley because I done my duty.' I don't believe in one man having so much service and another should have none."

On the second day's examination we covered about the same ground in order to test his memory and compare his statements. We found his memory perfect, and his statements almost identical. We gained some further information that for many months he had been an ardent student of the false doctrine of Anarchy; that he had attended many circles where these subjects were discussed. He related how a friend of his had broken away from the circle because he had changed his views and did not agree with him and the others in their radical ideas of government. He had heard Emma Goldman lecture and had also heard lectures on free love by an exponent of that doctrine. He had left the church five years ago because he said "he didn't like their style." He had attended a meeting of the Anarchists about six weeks ago, and also in July. He met a man in Chicago about ten days ago who was an Anarchist and had talked with him. The Friday before the commission of this crime he had spent in Cleveland, leaving Buffalo where he had been for two or three weeks and going to Cleveland. Said he had no particular business in Cleveland. "Just went there to look around and buy a paper."

The circle he belonged to had no name. They called themselves Anarchists. At every meeting they elected a chairman and usually it was one man. "He was a sort of spokesman for the crowd. This friend of mine who left the circle, I don't think much of. I don't like a man who changes around like he did. I like a man to have a fixed purpose and one who sticks to his belief. At this circle we discussed Presidents and that they were no good, but didn't say that they must be killed; just said that they were no good." During this examination the prisoner was very indignant because his clothing was soiled at the time of his arrest and he had not had an opportunity to care for his clothing and person as he wished. He refused to demonstrate again how he covered his weapon with a handkerchief because his was soiled and bloody. When given a clean one he showed at once the method of concealing the weapon and how he held it. His desire to keep himself tidy, demonstrated that he was not careless in dress and appearance as are most insane persons. He requested clean clothing, and as he had a small amount of money, a shirt and two handkerchiefs were purchased for him

that three local experts had already examined the prisoner for the District Attorney, but in view of the enormity of the offense and the fact that there obviously could be no legitimate defense other than insanity, it was deemed important, in the interests of justice, that his mental condition should be investigated by other experts acting in behalf of the defense, or at least independently of the prosecution to the end that the prisoner should be accorded every

with it. When they were brought in, the change was shown him. He instantly turned to the officers and said, "How is that? Don't I get more change?" The cost of the articles was told him and he said, "Oh, that's all right then." Said he would have slept well last night but for the noise of the people walking about. He had heard several drunken people brought to the station at night. Said he felt no remorse for the crime which he had committed. Said he supposed he would be punished but every man had a chance on a trial; that perhaps he wouldn't be punished so badly after all; his pulse on this occasion was 72; temperature normal; not nervous or excited.

On September 9th we observed a marked change in his readiness to answer questions. Many of the questions asked he refused to answer. He denied that he had killed the President or that he meant to kill him. Seemed more on his guard and refused to admit that he shot the President. He persisted in this course until nearly the close of the interview and until we told him that it was too late for him to deny statements that he had made to us. He then said "I am glad I did it."

At all subsequent interviews he declined to discuss the crime in any of its details with us but would talk about his general condition, his meals, his sleep and how much he walked in the corridor of the jail or upon any other subject not relating to the crime. From the daily reports filed with us we note that he talked freely; that his appetite was good; that he enjoyed his walks which he took in the corridor of the jail. He told his guards he would not talk with his lawyers because he did not believe in them and did not want them.

In conclusion as a result of the examinations of Czolgosz and of the reports of his watchers in the jail, we conclude that he was sane at the time he planned the murder and when he shot the President. We come to the conclusion from the history of his life as it came from him. He had been sober, industrious and law-abiding; till he was twenty-one years of age he was as others in his class, a believer in the Government of this country and of the religion of his fathers. After he cast his first vote he made the acquaintance of Anarchistic leaders who invited him to their meetings. He was a good listener and in a short time he adopted their theories. He was consistent in his adherence to Anarchy. He did not believe in Government, therefore he refused to vote. He did not believe in marriage because he did not believe in law. He killed the President because he was a ruler and Czolgosz believed as he was taught that

legal right, there being no desire to convict him if he were not mentally responsible, and that I had been selected for this responsible duty. With a deep sense of the responsibility involved, I consented to act, provided it should be distinctly understood that I was not there as a partisan expert in behalf of either side, but simply in a professional capacity to aid in determining the real mental state of the prisoner, and provided further that my selection would be acceptable to the eminent counsel whom the Bar Association had selected for the defense, should they decide to accept that duty, a matter which was then undecided. On the following morning—Saturday—Mr. Moot informed me that the gentlemen referred to had consented to act and invited me to meet them in conference, which I did, and which resulted in their requesting me

all rulers were tyrants; that to kill a ruler would benefit the people. He refused a lawyer because he did not believe in law, lawyers or courts.

We come to the conclusion that in the holding of these views Czolgosz was sane, because these opinions were formed gradually under the influence of Anarchistic leaders and propagandists. In Czolgosz they found a willing and intelligent tool; one who had the courage of his convictions regardless of personal consequences. We believe that his statement, "I killed the President because I done my duty," was not the expression of an insane delusion for several reasons. The most careful questioning failed to discover any hallucinations of sight or hearing. He had received no special command; he did not believe he had been specially chosen to do the deed. He always spoke of his motive for the crime as his duty; he always referred to the Anarchists' belief that the killing of rulers was a duty. He never claimed the idea of killing the President was original with him, but the method of accomplishing his purpose was his and that he did it alone. He is not a case of paronoia, because he has not systematized delusions reverting to self and because he is in exceptionally good condition and has an unbroken record of good health. His capacity for labor has always been good and equal to that of his fellows. These facts all tend to prove that the man has an unimpaired mind. He has false beliefs, the result of false teaching and not the result of disease. He is not to be classed as a degenerate because we do not find the stigmata of degeneration; his skull is symmetrical; his ears do not protrude, nor are they of abnormal size, and his palate not highly arched. Physically he has not a history of cruelty or of perverted tastes and habits. He is the product of Anarchy, sane and responsible.

[17] MacDonald, Carlos Frederick. Born Niles, O., 1845; Grad. Bellevue Med. Coll. (M. D.), 1869; M. A. (Hon.) Union Coll., 1894; Made a specialty of Nervous diseases and was consulting physician to many hospitals; Supt. Binghampton Asylum for Insane, 1879; State Asylum for Insane, 1881-1914; a frequent contributor to medical journals and proprietor of Dr. MacDonald's Sanitarium, Central Valley, N. Y.

to proceed at once to examine into the prisoner's mental condition and to report my conclusion to them as soon as I had reached one. They also assented readily to my proposal to invite Dr. Arthur W. Hurd to become associated with me professionally in the case, Dr. Hurd being Superintendent of the Buffalo State Hospital for the Insane and a competent alienist of large experience in mental diseases. It was also agreed that we should be allowed to confer freely with the District Attorney and with the experts for the people, after completing our personal examination of the prisoner. Being unable to establish communication with Dr. Hurd before evening of that day, and in view of the short time intervening before the trial, I decided to make a preliminary examination of Czolgosz alone, and did so that afternoon, in the District Attorney's office, first disclosing to him my identity and the object of my interview and informing him of his legal right to decline to answer any question I might ask him.

I examined him again on the following day—in the jail jointly with Dr. Hurd, and in the presence of one of his guards who was questioned at length, respecting his observations of him in the jail, as to his habits of eating, sleeping, talking, reading, etc. We subsequently interviewed the District Attorney and the Superintendent of Police, General Bull, who gave us all the facts and information in their possession respecting the case. The statement which Czolgosz made to the District Attorney shortly after his arrest throws much light on his mental condition on the day of the crime, but that official deemed it his duty to refuse to allow me to publish it. We also conferred at length with the people's experts—Drs. Fowler, Crego and Putnam—who stated to us separately and in detail their observations and examinations of him. We also observed him carefully in the court room throughout the trial.

After our examination of Czolgosz, we reached the conclusion, independently of each other, that he was sane and we so informed his counsel before the trial began.

As his family relatives resided in a distant state and were not accessible for interrogation, we were unable to obtain a history of his heredity beyond what he himself gave us.

Czolgosz, as he appeared at the time of my examinations of him at Buffalo, may be described as a well nourished, rather good looking, mild mannered young man with a pleasant facial expression; features, regular; face, smooth shaven and symmetrical; mouth and ears well formed and symmetrical; teeth, none missing, but in poor condition from neglect; tongue, clean; palate, fauces and uvula, normal in appearance; eyes, blue and normal in expression; pupils, equal in size and normally responsive to light and accommodation; hair, light brown and slightly curly; stature, medium—five feet seven and a half inches—and weight—estimated—about 140 pounds. The extremities were in all respects normal; was a slight deviation of the nose due to a blow which he received at the time of the assassination, and a superficial perpendicular cicatrix on the left face which he said was the result of a slight injury he received when

working in a barbed wire factory. There were no tremors or twitchings of the facial muscles, tongue or hands. The pulse and temperature and skin were normal, as also were the special senses, knee reflexes, coordinating power and the sensory and motor functions. Finally, a careful inspection of the entire visible body failed to reveal the presence of any of the so-called stigmata of degeneration. The almost perfectly symmetrical development—especially of the head and face—is a noteworthy feature in Czolgosz' case, although had deviations been found the fact would have had little weight as tending to show mental disease or degeneracy, as marked asymmetries, both cranial and facial, are frequently observed in persons who are quite sane and above the average in mental capacity.

In answer to questions he stated, in substance, that he was born in Detroit, Michigan, of Polish parents; that he was twenty-eight years of age, unmarried and a laborer by occupation; that he was a Romanist, originally, but had abandoned that faith several years ago because he no longer believed in it; that he attended the common schools as a boy and had learned to read and write; that he had used beer and tobacco, but not to excess; that he had done various kinds of unskilled labor such as farming, factorying, etc.; that his mother was dead and his father, one brother and a married sister were living; that so far as he knew there was no insanity in his family, and that he had not suffered any serious illness or injury during his life time; that he had never been subject to fits, spasms or vertigo; that he usually ate and slept well, and that his bowels were always regular.

Careful inquiry failed to elicit any evidence of delusion, hallucination or illusion. When questioned as to the existence of enemies, persecutions or conspiracies against him, he replied in the negative. He evinced no appearance of morbid mental depression, morbid mental exaltation, or of mental weakness or loss of mind; nor did he display any indication of morbid suspicion, vanity or conceit, or claim that he was "inspired" or had "a mission to perform," or that he was subject to any uncontrollable impulse. In fact, as regards the existence of evidences of mental disease or defect, the result of the examinations was entirely negative. On the contrary, everything in his history as shown by his conduct and declarations, points to the existence in him of the social disease, Anarchy, of which he was the victim."

Dr. MacDonald, after watching him from the day of his sentence to that of his execution, and having taken part in the autopsy, made this second report on the question:

"My last examination of Czolgosz was made jointly with Dr. Gerin, physician of Auburn Prison, the evening before his execution. This examination revealed nothing either in his mental or physical condition which tended to alter the opinion I gave to his counsel at the time of his trial, namely, that he was sane—an opinion which was concurred in by all of the official experts on either side, namely, Drs. Fowler, Crego and Putnam, for the people,

and Dr. Hurd and myself for the defense, also by Dr. Gerin, the only other physician who examined him. Furthermore, the prisoner's manner, appearance and declarations in the execution room, together with the post-mortem findings, corroborated most conclusively the original opinion as to sanity—while his dying declarations that he killed the President because he regarded him as an enemy of the good people—the good working people, and that he was not sorry for his crime—all tend to stamp him as an Anarchist. In fact, his bearing and conduct from the time of the commission of the crime to his execution were entirely consistent with the teachings and creed of Anarchy. Moreover, neither the three careful personal examinations which I made of him—one alone, one with Dr. Hurd and one with Dr. Gerin—the measurements of his body by the Bertillon system nor the post-mortem findings, disclosed the slightest evidence of mental disease, defect or degeneracy. This opinion is confirmed by the people's experts who repeatedly examined him and observed him from time to time, from the day of the assassination to the close of the trial, and by Dr. Gerin, the physician of Auburn Prison, who observed him carefully during the four weeks that he was in that institution awaiting execution. Dr. Gerin has had exceptional opportunity for the study of criminals, both sane and insane, in his capacity as Prison Physician and, previously, as Assistant Physician at the State Hospital for the Criminal Insane.

His refusal to talk with his counsel was perfectly consistent with the views he expressed to the District Attorney, after his arrest, that he did not believe in the law and wanted no counsel. It was entirely consistent with his expressed disbelief in government and in law, and his declaration that he shot the President with a clear knowledge of the nature and consequences of the act; and while he pleaded guilty in court and also proclaimed when he went to his death his reason for committing the crime, and declared that he was not sorry therefor, in a manner which clearly implied that he regarded the act as a justifiable one, he did not claim that it was not a crime on his part as paranoiacs usually do, nor did he in any way indicate that he regarded himself a victim of conspiracy or persecution. On the contrary, he declared—to the people's experts—that he fully understood what he did when he shot the President and was willing to take the consequences, that "I know what will happen to me; if the President dies I will be hung." It may be said that Czolgosz' belief which he expressed as he went to his death that the President was an enemy of the "good working people" was a delusion, and such it undoubtedly was in the broadest sense of that term: that is, it was a false belief, but it was in no sense an insane delusion or false belief due to disease of the brain. On the contrary, it was a political delusion, so to speak—a false belief founded on ignorance, faulty education and warped—not diseased—reason and judgment—the false belief which dominates the politico-social sect to which he belonged and of which he was a zealot, who in common with his kind believes that all forms of government are

wrong and unnecessary—a body of mal-contents whose teachings oppose all government and who advocate the use of violence to destroy the existing social and civil order of things. By his own admissions, Czolgosz was a devout Anarchist and a firm believer in the principles of Free Society as taught by Emma Goldman—of whom he was an ardent admirer—and others. These were the beliefs which furnished the motives for the murderous deed.

That Czolgosz was an Anarchist and actuated in his crime by the motives which spring from the teachings of that sect, are clearly shown by: 1. His declarations after his arrest, namely, that he did not believe in any form of government or law and that all rulers were tyrants who ought to be put down. 2. His admissions to the District Attorney that he was a member of anarchistic societies or circles, and had frequently attended the meetings of the same; also that he had been influenced in his views by the "lectures" of Emma Goldman; and that when apprehended anarchistic literature was found on his person, and 3. The recognition and commendation which he has received at the hands of Anarchists at their meetings both in this country and abroad since his death, several of these societies having openly recognized him as such and lauded his action.

The Anarchists' creed teaches that when one of their number is selected to do a certain deed, he is to proceed about it quietly and in his own way, taking no one into his confidence; that, having accomplished the deed, if apprehended he shall not admit his connection with any other members of the circle; that, if convicted and sentenced to die he shall go to his death without revealing his connection with others, resting secure in the belief that he will be ever regarded by his associates as a martyr and a hero who died in the discharge of a noble duty. The course and conduct of Czolgosz from the beginning down to his death are entirely in keeping with this creed. And finally the cool and courageous manner in which he met his death, and the fact that from the day of his arrest until he died, he never uttered a word that could be used against his accomplices—if he had any—and that he died—as Anarchists who suffer the death penalty always die—without uttering a word that would tend to incriminate any of his co-conspirators, tend to stamp him as an Anarchist.

In conclusion, the writer having viewed the case in all its aspects, with due regard to the bearing and significance of every fact and circumstance relative thereto that was accessible to him, records his opinion unqualifiedly that Leon F. Czolgosz on September 6, 1901, when he assassinated President McKinley, was in all respects a sane man—both legally and medically—and fully responsible for his act."

Dr. Edward A. Spitzka, a distinguished surgeon who had charge of the autopsy, afterwards wrote in a medical journal:[18]

[18] See, The Trial, Execution, Autopsy and Mental Status of Leon F. Czolgosz (MacDonald and Spitzka). Ante page 164.

"The results of the necropsy can be summed up by saying that Czolgosz was in excellent health at the time of his death. * * * The question as to whether his body invested a healthy mind opens up a wide topic for discussion which it is not entirely in the writer's province to pursue. So far as our knowledge of the correlation of brain-structure and brain-function extends, nothing has been found in the brain of this assassin that would condone his crime for the reason of mental disease due to intrinsic cerebral defect or distortion. The brain-weight, though by itself unimportant, when considered in its other relations points to a good condition of the organ. * * * The skull is not symmetrical, but the asymmetry is slight and fully within the normal range of variation. An absolutely symmetrical skull probably does not exist. * * * It is a probable fact that certain oft-mentioned aberrations from the normal standard of brain-structure are commonly encountered in some criminal or degraded classes of society, and those who have attempted to found a school of degeneracy have endeavored to explain crime and social wickedness as due to the accidental persistence of lower types of human organization. But these structural anomalies, so far as they have been described in the brains of criminals, are too few and too insufficiently corroborated to warrant us in drawing conclusions from them. Various perversions or anomalies of mind may exist in this class without presenting a uniform criminal type, either from the sociological or the anatomic aspect. Of course, it is far more difficult—and it is impossible in some cases—to establish sanity upon the results of an examination of the brain, than it is to prove insanity. It is well-known that some forms of psychosis have absolutely no ascertainable anatomical basis; and the assumption has been made that these psychoses depend rather upon circulatory and chemical disturbances. So far as this question touches upon the brain and body of Czolgosz, there have been found absolutely none of those conditions of any of the viscera that could have been at the bottom of any mental derangement. Taking all in all, the verdict must be socially diseased and perverted, but not mentally diseased. The most horrible violations of human law can not always be condoned by the plea of insanity. The wild beast slumbers in us all. It is not always necessary to invoke insanity to explain its awakening."

THE SPEECHES TO THE JURY.

Mr. Lewis. Gentlemen of the Jury: This being the first time in over twenty years that I have had occasion to address a jury as counsel in a case, you may imagine that I feel somewhat in a strange position, especially in a case of the importance of this. A great calamity has befallen our nation. The President has been stricken down and died in our city. It is shown beyond any peradventure of doubt that it was

at the defendant's hand that he was stricken down, and the only question that can be discussed or considered in this case is the question whether that act was that of a sane person. If it was, then the defendant is guilty of the murder and must suffer the penalty. If it was the act of an insane man, then he is not guilty of murder but should be acquitted of that charge and would then be confined in a lunatic asylum.

Much discussion and much talk has occurred in our midst and has been called to my attention as to the propriety of any defense being interposed in this case. Many letters have been received by me since I was assigned with my associates to defend this man, questioning the propriety of a defense being attempted.[19] You gentlemen know perhaps

[19] The following is one of these letters:

"Sept. 17, 1901. To the Hon. Robt. Titus & L. L. Lewis. Gentlemen: As the representative of 100 business men who asked the Mayor for a permit to hold an indigantion meeting last Saturday evening, earnestly implore you on their behalf not to act as counsel for the assassin Czolgosz. If you make an elaborate defense for him you know how the whole people of the United States would feel towards you (few people would take into consideration that it was your duty—our outraged people would never be convinced that justice to such a wretch could be given by an American citizen). If you didn't succeed in doing him any good, your reputation is more or less at stake and in any event gentlemen of your reputation from your hearts cannot be compelled to act as counsel for one of the vilest wretches that this great and glorious Nation has ever had the misfortune to encounter. Your names as counsel for a wretch who the whole world condemns, would go down into history—the assassin has repeatedly said he didn't want counsel. Why disgrace any American attorney's name in forcing him to do a duty (which no man with a heart can do) which the assassin don't want from a government he repudiates even to death. I implore you, Hon. gentlemen, on behalf of the committee of 100, and the whole United States, to refuse, under all conditions, to act as counsel for that miserable wretch who even refused counsel from the easiest people on the face of the earth, after robbing them of their beloved President. Again we implore you, or any other good American citizen, from even extending a good word on his behalf—it would give me the greatest pleasure on earth if I could only extend my hand of greeting to the wretch as he did to the poor honored martyred President. Respectfully yours, The Committee of 100. (Now the committee of 500, and increasing every day.)"

how Judge Titus and myself came into this case. The position was not sought by us but we appear here in performance of a duty which we think devolved upon us notwithstanding it is an exceedingly unpleasant one. His Honor the Judge who presides upon this trial as Justice of the Supreme Court sits here because the law makes it his duty to sit and preside over this trial; our very efficient and able District Attorney is prosecuting this action because the law makes it his duty to prosecute the action; you gentlemen are sitting here as jurors because you were commanded to appear here, and under our system of jurisprudence it was your duty to sit here and hear the testimony in this case and perform the unpleasant duty of determining whether this man is to be executed or whether he is to be acquitted. The defendant's counsel appear here because under our system of jurisprudence no man can be placed upon trial for the high crime of murder, the penalty of which is death, without the assistance of counsel. The court has the power to designate, and it is the duty of the counsel thus designated, to appear in the case unless they can make some reasonable excuse and succeed in being relieved of duty. Gentlemen, when we become members of the legal profession we become members of the court. We are compelled, if assigned to defend one who is charged with committing a crime, to respond and accept the duty unless we can present some reasonable excuse why we should be excused, and, as I understand, if we arbitrarily refuse to perform the duty which the court imposes upon us, we are guilty of a misdemeanor and liable to be punished by the court.

So that you see, gentlemen, if any simple-minded, thoughtless person should entertain the notion for a moment that the counsel who appear in this case are doing something they ought not to do, that person is laboring under a very serious misapprehension as to the duties devolving upon a lawyer.

Everyone, no matter how enormous the crime that he may have committed, is, under our laws, entitled to the benefit of a trial. In a case of murder in the first degree he must

have a trial. You sat here and listened to the defendant's plea of guilty when he was arraigned by the learned District Attorney, but the law of our state will not permit a man to plead guilty of such a crime as this. The law is so merciful of the rights of its citizens that it will not permit a man to plead guilty of the high crime of murder, so that even after he had conceded his guilt in this case, it was incumbent upon the court to insist that the trial should proceed and that the People should establish, beyond a reasonable doubt, that the defendant was guilty of the crime charged against him. There are, in our community, individuals probably—not, I hope, in very large numbers, but we know they are scattered all over our country, who think that in a case like this, or even in charges of much less enormity, that it is entirely proper that the case should be disposed of by lynch law, by mob law, and we can hardly take up a paper without learning that in some part of this free and independent country, a country where law prevails or should prevail, of a man having been mobbed upon the suspicion or belief that he was guilty of some crime. This state of things does not exist in our community, but it does in some parts of our country, as every reading, intelligent man knows. It is charged here that our client is an Anarchist, a man who does not believe in any law or in any form of government, and there are, as we are told, individuals who entertain that opinion, societies which entertain that opinion. We all feel that such doctrines are dangerous, are criminal, are the doctrines that will subvert our government in time if they are allowed to prevail. But, gentlemen of the jury, while I firmly believe in that, I do not believe that it amounts in danger to this country equal to the belief that is becoming so common that men who are charged with crime shall not be permitted to go through the form of a trial in a court of justice, but that lynch law should take the place of the calm and dignified administration of law in our courts of justice. When that doctrine becomes sufficiently prevalent in this country, if it ever does, our institutions will be set aside and overthrown, and if we are not misinformed as

to the state of the mind of the public in some parts of our country, the time is fast approaching when men charged with crime will not be permitted to come into the court and submit to a calm and dignified trial, but will be strung up upon a tree, upon the bare suspicion sometimes of the fact that they may have committed some crime. Why, it is not long since I read in a paper that a colored man in the South was mobbed and his life taken because he had insulted a white man. What the insult was the newspaper did not say, but he had insulted a white man and his life was taken because of that insult to the white man. Now I suggest, gentlemen, that that class of community who are crying out in our streets and who are sending letters suggesting that a man charged with the crime that this defendent is, should not be permitted to have a trial before a court of justice, I submit that they are a more dangerous class of community than the Anarchists about whom we read so much. No, it is the duty of every American citizen, of every good man, to stand firmly by the law, to put his face against any idea that a man should be punished for any crime until he is proven guilty in a court, beyond any reasonable doubt.

My associates and myself are here to uphold the law. Some weak-minded, foolish people entertain the notion that a lawyer, when he appears in defense of a criminal, is in court to obstruct the due administration of law, is in court to raise every technicality that he can to prolong the trial and to reverse any verdict which a jury may render, but no man who understands and knows the better class of the members of the bar entertains any such notion. My associates and myself are here for the same purpose that the learned District Attorney is here—to see that this trial progresses in a legal, orderly and proper manner, and, as I suggest, we must, in every way possible, put down and suppress this feeling that cases may be disposed of without the intervention of courts of justice.

I remember, gentlemen, when I was a young man living in the city of Auburn, studying my profession, that the news

came that a colored man had gone up upon the shore of the Owasco Lake and there had murdered practically an entire family by the name of Van Ness. The news came into the town where I was at the time and it created an intense excitement. The people gathered upon the street to hear the news. In the course of the afternoon, after the commission of the crime, it was understood that a colored man, Freeman, had been arrested and was being brought to the city to be incarcerated in the jail. The people upon the street became more and more excited. They began to talk about mobbing the colored man when he should arrive—that he was not entitled to a trial. Mr. William H. Seward, who was then a resident of the city of Auburn, appeared upon the street and counseled moderation, counseled the people to wait and see whether the man was guilty of the crime, to permit him to have a legal, lawful trial. But the people protested—"He is guilty beyond any doubt; he must be disposed of at once." Mr. Seward still insisted and they succeeded in incarcerating Freeman in the jail. It soon became known that Mr. Seward had volunteered, without any designation of the court, had volunteered to defend the negro when he was put upon trial, and then the indignation arose again that he should interpose a defense in such a case as that, and that far-seeing man, that statesman, who saw that there was an opportunity to give an object lesson to the world as to the proper disposition of such a case, stubbornly insisted that he would defend the negro. He was put upon trial and for two long months that trial proceeded; as I remember, it occupied some three weeks in obtaining a jury, and the trial consumed at least two months, and I sat by during almost the entire length of that trial and listened to the defense that Mr. Seward interposed—not that he cared anything for the negro, but he wanted to teach the people of the country the sacredness of the law; he wanted to impress upon them the importance of maintaining the law and putting down mob violence.[20]

[20] See, Trial of Freeman, 16 Am. St. Tr.

And this trial is a great object lesson to the world in that regard. Here is a case where a man has stricken down the beloved President of this country, in broad daylight, in the presence of hundreds and thousands of spectators. If there ever was a case that would excite the anger, the wrath of those who saw it, this was one, and yet, under the advice of the President, "Let no man hurt him," he was taken, confined in our prison, indicted, put upon trial here, and the case is soon to be submitted to you whether he is guilty of the crime charged against him.

That, gentlemen, speaks volumes in favor of the orderly conduct of the people of the city of Buffalo. Here was a man occupying the exalted position of President of this great republic, a man of irreproachable character, a man against whose character not the least stain was ever known, who had come to our city to assist us in promoting the prosperity of our great exposition. He submitted to being met by the people who desired to see him, in order to help on this great enterprise in which we have been interested, and he was stricken down and died from the effects of the wounds. It has touched every heart in this community and in the world, and yet we sit here today in this room quietly considering the question whether this man is responsible for the act which he committed, and the question, gentlemen, is one that you are called upon to decide.

The law presumes that this man is innocent of the crime, and we start, in investigating this case, with the assumption that for some reason or other he is not responsible for the act which he performed on that day. That is one of the merciful provisions of the law of this civilized state and it is a provision of law which you must consider and which you must permit to influence your minds until you are satisfied by the evidence in the case that that doubt has been removed.

Now, gentlemen, we have not been able to present any evidence upon our part. The defendant has even refused on almost every occasion to even talk with his counsel; he

has not aided us; so that we have come here under, as I said to you, the designation of the court, to do what we can to determine this important question which is to be submitted to you.

All that I can say, to aid you, is that every human being has a strong desire to live. Death is a spectre that we all dislike to meet, and here this defendant, without having any animosity against our President, without any motive, so far as we can see, personal motive, we find him going into this building, in the presence of these hundreds of people, and committing an act which, if he was sane, must cause his death.

Now, could a man, with a sane mind, perform such an act? Of course, the rabble in the street would say, "no matter whether he is insane or sane, he deserves to be killed at once;" but the law says, no; the law says, consider all the circumstances and see whether the man was in his right mind or not. But one may say, "why, it is better that he should be convicted, as a terror to others." That may be so in some regards, but, gentlemen of the jury, if it could be, if it can be that you find that this defendant was not responsible for the crime, for this act, you would aid in lifting a great cloud from the hearts and minds of the people of this country and of the world. If our beloved President had met with a railroad accident coming here to our city and had been killed, we should all regret very much, we should mourn over the loss of such a just man, but our grief would not begin to compare with the grief that we have now, that he should be stricken down by an assassin. That adds poignancy to our grief—it does in my case, to a very large extent. But if you could find that he met his fate by the act of an insane man, it would amount to the same as though he met it accidentally, by some accident, and passed away under such circumstances.

Now, gentlemen, I have said about all I care to say about this case. The President of the United States was a man for whom I had the very profoundest respect. I have watched

his career from the time he entered Congress—twenty or more years ago—until his last breath here in the City of Buffalo, and every act of the man, so far as I could judge, has been the act of one of the noblest men that God ever made. His policy, we care nothing about that so far as we may differ as to his policy, but his policy has always met with my profoundest admiration in every respect. I have known him not only as a statesman, but I have known him, through the public press and otherwise, as a citizen, a man of irreproachable character, a loving husband, a grand man in every aspect that you could conceive of, and his death has been the saddest blow to me that has occurred in many years.[21]

Mr. Titus. If the Court please, the remarks of my distinguished associate have so fully and completely covered the

[21] "Turning to the jury, the venerable lawyer began to speak. It was the first time in 20 years that he had addressed a jury. There were old lawyers in the court room who, as they listened, recalled by-gone days when the distinguished jurist was in the zenith of his glory as a great trial lawyer. He spoke deliberately, impressively. He stood, a picturesque figure, with snowy white hair and beard, soft voice and gentle manner. He was garbed in black. Clearly his task was not to his liking, but with his opening sentences he drew the attention of all and held it, unbroken to the end. It must have galled the assassin to hear himself and his crime used as the pretext for so lofty and dignified and able a speech as Judge Lewis made. Twice the speaker was compelled, by emotion, to pause. His eulogy of the dead president was most affecting and Judge Lewis stopped abruptly, his eyes filled with tears, overcome by emotion. His voice wavered and broke with the last sentence and he sat down with his handkerchief to his eyes."—The Buffalo Express, Sept. 24, 1901.

Judge Lewis received after the trial, more than a hundred letters from prominent lawyers and others and from different sections of the country commending his defense of the prisoner and especially his plea for maintaining the dignity of the law. From them the editor has selected the following:

At my earliest convenience, I write, in behalf of the Erie County Bar Association, to congratulate you upon the conspicuous ability and fairness with which you discharged a disagreeable duty in the defense of Czolgosz. By so doing, you distinguished yourself, your city, your profession, and your brethren at the Bar, and, most of all, you made your country your lasting debtor for the service ren-

ground and so largely anticipated what I intended to present to the jury myself, that it seems entirely unnecessary for me to reiterate what has already been said upon this sub-

dered in behalf of the law. Your defense of Czolgosz was in the very spirit of the last words of President McKinley concerning him.

—ADELBERT MOOT, President Erie County Bar Association.

I enclose herewith a copy of a letter received from the Secretary of War concerning the trial of Czolgosz and the dignified way in which the case and the punishment of the prisoner, were conducted. Very truly yours, B. B. Odell, Governor of New York.

"WAR DEPARTMENT.

(COPY) Washington, November 6, 1901.

The Honorable Benjamin B. Odell, Governor of New York. My dear Sir::—I beg you to accept and to convey to the officers charged with the administration of justice in the State of New York, and particularly in Erie County, an expression of satisfaction and approval upon the effective and dignified way in which the law has been vindicated, and the ends of justice have been attained, in the prosecution and punishment of the assassin Czolgosz. The Court, the Prosecuting Attorney, the officers who had the prisoner in charge—all appear to have performed their duties with effectiveness and decorum, and particular credit seems due to the distinguished gentlemen who, upon the request of the Bar of Erie County, undertook the disagreeable task of protecting the legal rights of the wretched culprit under the assignment of the Court.

The course of justice was swift, but measured. Protection against lawless violence was shown to be consistent with the certain and awful punishment of guilt. No opportunity for defense was withheld; but no opportunity for spectacular display, or the gratification of vanity, which is so great an incentive to such crime, was afforded. I know that this has been appreciated by the representative of New York in that Cabinet. I am authorized to say that President Roosevelt fully concurs in the sentiments which I have expressed. I remain my dear Governor, with great respect and esteem, Your obedient servant,

ELIHU H. ROOT, Secretary of War."

Permit a stranger to you to express his profound appreciation that our country in its sore trial was so fortunate as to secure, in the trial of the assassin of our great President, men of such character and ability as yourself and Judge Titus. The assurance which this choice gave us that there would be no objectionable features connected with the trial, has been fully sustained. I read your address to the jury this morning with the deepest interest. It ought to be published in every town of our country. It should be read in

ject, and we, therefore, rest with the remarks made by Judge Lewis.

District Attorney Penney. Gentlemen of the Jury: It is hardly possible for any man to stand before his fellow-men and talk without the deepest emotion concerning the awful tragedy that has come upon the entire world. A remarkable exhibition of feeling has just been made to you by the distinguished jurist who was forced by his duty as a citizen,

every school of the land. It is not only the profoundest wisdom, but its form is a classic. Excuse my intruding myself upon you, but I cannot restrain my impulse to thank you for your noble part in this extremely trying situation. Very truly,

JAMES R. DAY, Chancellor Syracuse University.

As President of the Iowa State Bar Association, I would like very much to have a copy of the Daily Press of your City, which contains proceedings of the Czolgosz trial. I especially desire your address to the Jury in that case. I congratulate you on the noble effort you have made in the vindication of the law and the condemnation of lynch law. I congratulate the Bench and the Bar of Buffalo on the speedy and equitable trial granted to this unfortunate wretch. I trust that the people of the United States will learn a salutary lesson from this trial, and that the disgraceful scenes that have been enacted in various parts of the country in condemning, even criminals, to death without due process of law, will be at an end. Hoping I may hear from you, and wishing you every personal blessing, I remain,

J. H. McCONLOGUE," President Iowa State Bar Association.

My gratitude to you for the plea which you made at the Czolgosz trial is so real and sincere that I am not content with just feeling it. I teach a class of boys in a grammar school in Brooklyn, the class which promotes to the high school, and I wanted my boys to see that the saving of the assassin for legal trial was a triumph for law and order for which every American ought to be devotedly thankful. So when I read your plea and found in it just what I wanted to say, stated in a manner so clear, so simple, so direct, that I knew my youngest pupil could grasp it, I carried it off with delight to read during the civil government period. When I read, as impressively as I knew how, the paragraphs which laid such stress on duty—that splendid word which the children of this day seldom hear—and those which called attention to the great danger of the spread of the belief that lynch law should take the place of the law of a court of justice, many faces showed intelligent ap-

as a lawyer and as a judge to carry out the absolute mandates of our law and to stand here before you and present the formal rights of this defendant. He says to you that there is no question, that it has been proved beyond any peradventure that this man was the instrument that caused the death of our beloved President, and he simply leaves you with the statement that if this man was mentally responsible, then he is fully and absolutely guilty of the crime of murder in the first degree. Gentlemen, we have been expeditious in the presentation of this case to you, still we have endeavored to present it to you with no indecent haste. We have endeavored to present to you all the essentials, all the material elements that go to make up the crime of murder in the first degree. We have shown you that our beloved President was shot on the 6th day of September; we have shown you the history of that wound and that he came to his death as the result of it. We have shown you that this defendant stood there in the Temple of Music on that Friday afternoon and with this weapon, we have exhibited here, fired the fatal bullet. We have shown you, by witnesses, the admissions of this man concerning his premeditation and deliberation, for how long a period he had thought about this awful crime, where he was born and educated and where he got the seeds of this terrible deed in his heart. We have shown you that he had gone to these anarchistic or socialistic meetings and that there had been embedded in his diseased heart the seeds of this awful crime which resulted in that terrible shot on Friday afternoon. He retailed and detailed to the different people the history of himself and of

preciation and approval. It took me twenty-two minutes to read it and they all listened attentively to the end. When I closed, there was no applause, scarcely a change of position, but each boy looked up to receive the order for the next period with a face which indicated that he meant to do his duty and conform to the law of the school room. Could I have had a more gratifying commentary? Thanking you for the help that your words have been to me and to my boys, I am, Very sincerely yours,

EFFIE L. SMITH, Brooklyn, N. Y.

his cogitations, how he was led up to do this act, and the counsel says to you gentlemen that if—IF—the man was sane, then he is responsible. He says to you that this man must be presumed to be innocent, that that is a presumption of our law. But it is also a presumption of our law that every man is sane until proven insane. In other words, the prosecution has the right to come in here and rely on the presumption that every man who is charged with crime is sane and mentally and morally responsible for his acts unless he himself introduces evidence showing the contrary. Therefore, gentlemen, the question seems simple to me. What evidence is there in this case that this man is not sane? Under the presumption of the law that he is sane and under the admissions that have been made here that he is the agent that caused the death, with all the elements that go to make up the crime absolutely proven, how brief ought to be your meditation, how brief ought to be your consultation about the responsibility and criminality of this individual?

Gentlemen of the jury, this is not a case for oratorical flights or for vivid imagination. Both the counsel for the defense and the counsel for the prosecution have endeavored to eliminate everything of a sensational character from everything concerning this case, and I intend in this address to you to continue that line of procedure. I do not intend to make any attempt at oratorical flights; I do not intend to work upon my imagination or try to sway you under my expressions here of the enormity of this offense. It is unnecessary. You, as well as I, and as well as every citizen of the civilized world, understand the enormous responsibility that is now about to devolve upon you. The Counsel wisely and well said to you that no man should be put out of existence by lynch law. The counsel well said to you that the people of Buffalo are to be commended for the orderly and law-abiding spirit and treatment that they have given this case. But at the same time, gentlemen, the law must be vindicated. Enough has been said, enough has been shown, enough has been demonstrated to forcibly convince me—and I know it

has convinced you—that a terrible thing has happened and it has happened because there is a certain class of people in this country who unless they feel the strong arm of justice, the strong arm of the law, is so irresistible as to force down everything that is against law and order, are going to bring about something terrible to our beloved country. Gentlemen, it is an awful, an awe-inspiring and a great truth that has been taught in this case. When I think, gentlemen, of that grand man who stood but a few days ago in the Temple of Music, the man who had come from the lowly walks of life, who had made his own way by his own unaided strength and courage, as a lawyer, congressman, governor and then President, and, more than all else, a loving husband, the man who cherished his sick wife through all the terrible weeks of her illness, notwithstanding the great responsibilities upon him as President of our country, a man who was so great that on his dying bed the last words that he said were "It is God's way, not ours; His will be done, good-bye, good-bye,"—that man who was still so great and yet who could stand and take the hand of this man, his assassin, even the worst man that you could imagine, who offered to take into his hand that creature and shake him by the hand upon the same floor, upon the same level, without taking unto himself any of the things that he could and perhaps ought to have taken by reason of his great achievements,—think of it, gentlemen! think of the great spectacle, the great lesson that it has taught, the great things that our country produces; a man so great, can stoop so low; a man so great that he can forgive his own assassin; so great that he does not hold against him one word, one thought of ill-will;—the noblest man, I believe, that God ever created upon the soil of the United States was taken from our midst—and yet withal, with all that terrible calamity, and, as a man said to me who stood right beside our beloved President when he was shot, he said to me only two or three days ago: "I have traveled all over our broad land since that awful calamity, I have seen thousands and thousands of people collect along the railroad even to get a glimpse

at the train; I have seen people stand for hours in the rain to look upon the outside of his casket; I have seen people mourn and shed tears for hour after hour who never saw that great man," and I am convinced, if I never was before, that there is such a thing as a national heart and that that great national heart has been weeping as it never wept before, that great heart is broken and it will take God's own time and God's own way to heal it, such a great calamity has been brought about. Brought by what? By this instrument of an awful class of people that have come to our shores, a class of people that must be taught, that should be taught and shall be taught that it is entirely foreign to our laws, to our institutions and to the laws and institutions that evolved such a man as William McKinley, that they have no place upon our shores, that if they cannot conform to our laws and our institutions, then they must go hence and keep forever from us; that they will not be permitted to come here, to stay here to educate themselves into the notion that they can take the life of any individual irrespective of consequences, and come into a court for protection. Think, gentlemen; think of the grand spectacle that is illustrated here! Here is a man who professes that he does not want a lawyer, that he does not believe in law, that he does not believe in God, that he does not believe in the marriage relation, that he believes in the destruction of life by individuals, and yet, notwithstanding those beliefs, those theories, those ideas, our laws and our institutions insist that he should be represented by two of the ablest and most respected jurists in our city, that we should go through all the legal formalities just the same as if he were the most respected and highly-thought-of man heretofore, that all the laws and forms of law must be complied with, and even though he comes into court and tells you prior to trial that he is guilty of the crime charged, yet notwithstanding, gentlemen, under our constitution you must sit here and listen to the formal proof on the part of the People, so that our law must be vindicated, our institutions must be lived up to, the greatest thought of our people must be demonstrated to be

correct notwithstanding the fact that this man himself says he does not want it.

Gentlemen, I have said all that I care to say; I have said perhaps more than I ought to say. It is not necessary for me or any one else to say anything to you. You know your duty. You have sworn to give this man a fair trial upon the evidence. And what is the evidence? The evidence has been adduced on the part of the People, as I claim, fully and absolutely demonstrating every element of the crime charged, and that is all there is of this case.

Gentlemen, this has been an orderly procedure, without indecent haste, but still it has been with the idea, with the irresistible impulse to insist and to carry out the strict law applicable to this terrible crime. The duty of the counsel on both sides is now ended; the Court will charge you briefly and then it is your duty to take up the case. I have the greatest confidence in each one of you and I have no doubt that the same thought, the same idea, the same object is in all your minds, that our beloved country, even though we have lost one of our greatest men, shall still retain the respect of the whole world and everybody shall be taught, by your treatment of the case, that no man, no matter who he is or where he hails from, can come here and commit such a dastardly act, not only against such an individual but against our laws and institutions, and not receive the full penalty of the law.

THE CHARGE TO THE JURY.

JUDGE WHITE. Gentlemen of the Jury:—The defendant in this case is charged by the People of the State of New York with the crime of murder in the first degree. The law requires that he shall in the first place be brought into court and allowed an opportunity to plead to the charge. In this case the defendant has so appeared, and he has acknowledged his guilt. Such an acknowledgment, such a plea, under such circumstances, is not conclusive upon the Jury or the Court, and the law requires that notwithstanding such a plea, a formal and orderly and a lawful trial shall be accorded to the defendant.

The question of the guilt or innocence of this defendant, Gentlemen of the Jury, is, at this moment, an original one with you. It will be submitted to you for your determination as to whether or not the defendant is guilty; and the presumption is, and it must be observed by you, that up to this time, and until you shall otherwise decide, that he is an innocent man. The law guarantees, as I have said, that he shall be fairly tried, and that he shall be tried by twelve men who are impartial, who are intelligent, who are capable of sifting the testimony and the evidence as it is given upon the trial, and determine from such an examination as that where the truth of the matter lies. While it is conceded by the defendant, and by his counsel, that this defendant fired the shot that caused the death of William McKinley, it does not follow, Gentlemen of the Jury, that he is guilty of, or that he should be found by you guilty of, the crime of murder, or of any crime. The question as to whether he is or is not guilty is an original one up to this time with you.

It is incumbent upon the People in order to satisfy you that the defendant is guilty of the crime charged against him to produce such evidence as convinces your minds beyond a reasonable doubt that he is guilty. If the People fail to do that, if in this case they have failed to do it, notwithstanding any impression that you may have received, any opinion which you individually may have formed concerning the case, if on a careful and full comparison and examination of all the evidence and all the circumstances in the case there exists in your minds a reasonable doubt of the man's guilt and responsibility under the law, it is your duty to acquit him.

In order to satisfy you, gentlemen, that the defendant is guilty, the People have produced a line of testimony tending to show that on the day of the shooting, to-wit, the sixth day of September, 1901, that this defendant did shoot and kill the president of the United States. They have given evidence tending to show that the defendant premeditated and deliberated upon the commission of this alleged crime before he committed it.

If you are satisfied, Gentlemen of the Jury, from the evidence in those respects that there was a predetermined design on the part of this defendant to effect the death of William McKinley, and in pursuance of that design these shots were fired and his life was sacrificed, he is guilty of murder in the first degree. Unless you are satisfied of that fact, it is your duty, as I have already said to you, to acquit the defendant.

Something has been said, and very properly, too, concerning the person who was killed—The President of the United States. The President of the United States stood on the occasion of this shooting, as counsel upon both sides of this case have told you, as the representative of the majesty and dignity of the Nation, and the attack upon him for which the defendant was arrested, if he was responsible for the act, is indeed a high crime.

It was an assault upon the dignity and the majesty of the law. But you, Gentlemen of the Jury, should not be permitted, nor should thoughts of that kind be permitted under any circumstances to sway you from the line of your duty as you may see it. In other words, the oath which you took when you entered the panel here to try this man was that you would give a true verdict according to the evidence in *this* case. What that evidence proves, Gentlemen of the Jury, is for you to say. You are not bound to find criminal responsibility from any or all of the evidence which has been given upon this case. In other words, it is for you to say whether it is true—what the fact is. In the language of the books, you are the sole judges of all the questions of fact involved in the case. The fact, Gentlemen of the Jury, that a verdict of guilty might necessitate the death of the defendant should not be permitted to sway you from the discharge of your duty as you see it. I have said that you are bound to find the defendant guilty and criminally responsible for his act beyond a reasonable doubt before you can convict.

Now, it may be when you come to retire and deliberate upon this case that you may ask yourselves "What is a reasonable doubt." I think it is sufficient upon that subject to say to

you that while a great deal has been written and a great deal has been said in defining what a reasonable doubt is, that it means so far as your application of the principle here is concerned, that you are bound to sift, compare and examine all of the evidence and all of the circumstances which have been developed upon this trial; and if, when you have done that, there exists in your mind a doubt as to the criminal responsibility of this man, you are bound to acquit him. If you are satisfied after such an examination and such a comparison that there is no question about the man's guilt, you are bound to convict.

Gentlemen of the Jury, there are, in a homicide, which is the killing of one human being by another, such as the circumstances of this case has developed, provisions of law that a Jury may find the defendant guilty, if they believe him guilty of any crime at all, of any one of four degrees of the crime. The first is murder in the first degree. The second is murder in the second degree. The third is manslaughter in the first degree. The fourth is manslaughter in the second degree. Your attention will be called further on specifically to what the three first of these provisions of the law relate.

I want to say this at this time: That up to this time, up to this point in the progress of his lamentable affair, that so far as the Court, so far as the jurors in the presence of the Court, so far as other people in the presence of the Court is concerned, there has been that decorum and that respect which, it seems to me, ought to furnish an object lesson to the people of our country as perhaps it will to the people of other countries. There has been up to this time no attempt to unfairly influence you or to unfairly secure a verdict one way or the other at your hands either by the defense or by the People. Counsel have discussed the facts and circumstances of this occurrence from their respective points of view as it was their duty to do, and you have had the privilege of listening to counsel experienced in the law concerning the rights of the defendant, concerning the enormity of the crime and all that, if he is criminally responsible at all. The fact that the

man who was killed was the President of the United States, as I have already said to you, in and of itself is not of much significance. The crime is against the majesty and the dignity of the law, and I believe, Gentlemen of the Jury, that we can pay no higher tribute to the man who is dead than to observe that exalted opinion and reverence for the law which he would ask if he were here. As it seems to me, it has been well said that a disposition to incite others to the commission of crime, is certainly as reprehensible, except possibly in degree, in the minds of some of us as the alleged crime which we are trying here today. Incitement to unlawful violence, to lynching and to commit offenses against the law evidences at any rate anarchists in embryo. The man who is ready to go out on the street today and commit a crime because some other man has committed a crime is as guilty in his heart as the man who has already committed the act; and it is for that reason if I can do anything in this case to impress upon the community, to impress upon the people of this State, the necessity for the observance of the law and its due and orderly administration, I will accomplish certainly a good purpose.

Now, Gentlemen of the Jury, to be more specific, let me say to you this should be your guide in the conduct and consideration of this case when it is placed in your hands. If you will listen carefully, I think your duties will be plain; and, in this connection, it is but fair to say that so far as the legal aspects of this case are concerned, it is your duty and your oath compels you to observe the principles by which you are to be guided as laid down to you by the Court. So let me say in closing that if on the sixth day of September, 1901, the defendant did wrongfully without justifiable cause or excuse assault, shoot and wound William McKinley at the place, in the manner and by the means alleged in the indictment upon which he is being tried, and such assault, shooting and wounding were committed from a deliberate and premeditated design to effect the death of the said William McKinley, or of another, and if the said William McKinley thereafter died

from the effects of such assault, shooting and wounding, and such assault, shooting and wounding were the sole and proximate cause of his death, and if at the time of such assault, shooting and wounding, the defendant was not laboring under such a defect of reason as not to know the nature and quality of the act he was doing or that it was wrong, he is guilty of murder in the first degree. If you in your deliberations find that the defendant is guilty of murder in the first degree as charged in the indictment, you will render your verdict in that form. When you are asked by the Clerk as to how you find, your verdict will be, if you find him guilty of murder in the first degree, "Guilty of murder in the first degree as charged in the indictment."

If, however, you gentlemen are not saisfied that this defendant is guilty of murder in the first degree from all the evidence and facts and circumstances in the case, then you will proceed to determine whether he is guilty of murder in the second degree. In that regard it is sufficient for me to say to you that if on the sixth day of September, 1901, the defendant did wrongfully, without justifiable cause or excuse, assault, shoot and wound William McKinley at the place, in the manner and by the means alleged in the indictment upon which he is being tried, and such assault, shooting and wounding were committed with a design to effect the death of said William McKinley, or of another, but without premeditation and deliberation, and if the said William McKinley died thereafter from the effects of such assault, shooting and wounding, and such assault, shooting and wounding were the sole and proximate cause of his death, and if at the time of such assault, shooting and wounding the defendant was not laboring under such a defect of reason as not to know the nature and quality of the act he was doing or that it was wrong, he is guilty of murder in the second degree.

The second proposition, as I have given it to you, eliminates premeditation and deliberation.

If you should not find him guilty of murder in the first degree, therefore, and you find under the evidence in the case

that he is guilty in the manner and to the extent that I have already called your attention to, then the form of your verdict will be, when asked by the Clerk how you find, "Guilty of murder in the second degree."

If, however, you find there is a reasonable doubt in your minds as to his guilt upon both of these propositions, you will pass to the consideration of the question whether he is guilty of manslaughter in the first degree. In that regard, if on September sixth, 1901, the defendant assaulted, shot and wounded William McKinley at the place, in the manner and by the means as alleged in the indictment, with a dangerous weapon—and in this case the evidence is that the weapon used was a revolver loaded with powder and balls—without justification or excuse and without a design to effect the death of said William McKinley, or of another, and the said William McKinley thereafter died solely in consequence of the effects of such assault, shooting and wounding by means of a dangerous weapon, and the defendant was not at the time of such assault, shooting and wounding laboring under such a defect of reason as not to know the nature and quality of the act he was doing or that it was wrong, then, Gentlemen of the Jury, he is guilty of manslaughter in the first degree.

I do not think the evidence in this case calls upon me to say anything concerning the crime of manslaughter in the second degree.

You see the test of responsibility is made by law and is whether or not the defendant was laboring under such a defect of reason as not to know the nature or quality of the act that he was doing or that it was wrong. In other words, if he was laboring under such a defect of reason as not to know the nature and the quality of the act that he was doing or that it was wrong, it is your duty, Gentlemen of the Jury, to acquit him in this case. That is the test so far as the plea or claim of irresponsibility is concerned. If he premeditated and deliberated upon the commission of this shooting, and if it was done with a design to effect the death of William McKinlay, and if at that time he was not laboring under such a de-

fect of reason as not to know the nature and quality of the act that he was doing or that it was wrong, he is responsible. That is the test so far as responsibility is concerned under the laws of this State.

Gentlemen of the Jury, I commend the patience and the care which I have observed on your part as the evidence was being given in this case, to its smallest detail. You have been patient, as I say, and apparently you have been attentive to the case as presented by the People and the time has now come when it is to be left in your hands for a final determination.

It is very desirable, Gentlemen of the Jury, that this proceeding, as it has been characterized from the beginning, shall continue to the end; that there shall be no unseemly demonstrations; that there shall be no conduct which would bring the blush of shame to the cheeks of any one, either on your part or on the part of the people who listen to the proceedings in this case; and in that behalf, Gentlemen of the Jury, I ask that when you have determined this case that your conduct shall have been such as to elicit the approval, not only of your fellow citizens in this community, but the people of all communities who have kept watch upon the progress of this trial, that your conduct may be evidence of a genuine, a tender and a reverent solicitude for the dignity and the majesty of the law.

Mr. Penney. I ask your Honor to charge the Jury that the law presumes every individual sane.

THE COURT. The law in this case presumes that the defendant was sane.

Mr. Penney. I ask your Honor to charge the Jury that the burden of overthrowing the presumption of sanity and of showing insanity is upon the person who alleges it.

THE COURT. The burden of showing insanity is upon the person who alleges it. Is that all?

Mr. Titus. You do not want that charged in that way?

Mr. Penney. I concede that that last part be stricken out. The counsel objects to it.

THE COURT. The burden in the first place, Gentlemen of the Jury, upon that proposition is with the defendant to give some evidence tending to show insanity on his part, or irresponsibility; but in that connection, when evidence of that kind is given, if it is given

at all, it is incumbent upon the People to rebut or meet it with other evidence and remove all doubt in your minds—all reasonable doubt in your minds upon the subject.

Mr. Titus. I did not intend to ask your Honor to charge anything before the counsel got up to request your Honor to charge, but I now ask your Honor to charge that if the Jury are satisfied from all the evidence in the case that at the time of the committing of this assault he was laboring under such a defect of reason as not to know the quality of the act he was doing or not to know the act was wrong, that then he is not responsible and they must acquit him.

THE COURT. I so charge. I intended to make it very plain to the Jury in the first place. Is that all, Judge Titus?

Mr. Titus. That is all, sir.

THE VERDICT AND SENTENCE.

THE COURT. You gentlemen may now retire with the officers.

The Jury retired at 3:50 P. M. and returned into court at 4:25 P. M.

The Clerk. Gentlemen of the Jury, have you agreed upon a verdict?

The Foreman. We have.

The Clerk. How do you find?

The Foreman. Guilty of murder in the first degree as charged in the indictment.

The Clerk. Gentlemen, listen to your verdict as the Court has recorded it. You say you find the defendant guilty of murder in the first degree as charged in the indictment. So say you all?

The Jury. We do.

THE COURT. That ends your service, Gentlemen of the Jury, in connection with this case. You are excused.

September 26.

Mr. Penney. I move sentence in the case of The People against Leon F. Czolgosz, your Honor. Stand up, Czolgosz.

The Crier. Put your right hand on the Book.

The Clerk. You do solemnly swear that you will true answers make to such questions as shall be put to you touching your name, your place of birth and occupation and such other questions as shall be asked you, so help you God?

Mr. Penney. Leon, how old are you? 28. Where were you born? Detroit. Where did you live last? Buffalo. Do you know the street and number? Broadway. At Nowak's? Yes, sir. Have you any trade or are you a laborer? Laborer. Are you married? Single. What schools have you attended? Small—common school. Been to the church school, too? Yes. Catholic church? Yes. What church were you educated in? Did you use to go to the Catholic church? I did. Are your father and mother alive? No, sir. Which is dead? My mother is dead? Your father is living? Yes, sir. Are you temperate? Do you know what that means? No, sir. Do you

drink intoxicating liquors much? No sir, don't drink too much. Have you been in the habit of getting drunk? You are not, are you?

THE COURT. Pass to something else, Mr. Penney.

Have you been convicted of any crime before this? No sir.

The Clerk. Have you any legal cause to show why sentence of the Court should not now be pronounced against you?

The Prisoner. Can't hear that.

THE COURT. People in the room should remain absolutely quiet and those who are unwilling to do that until the proceeding here is terminated should retire from the room at this time.

The Clerk. Have you any legal cause to show why sentence of the Court should not now be pronounced against you?

The Prisoner. I would rather have this gentleman speak, over here (Mr. Penney).

Mr. Penney. The Clerk asks you if you have any legal cause to show why sentence should not now be pronounced against you? Do you understand?

The Prisoner. No sir.

Mr. Penney. He wants to know if you have any reason to tell the Court why you should not now be sentenced—say anything to the Judge. Have you anything to say to the Judge before sentence? Say yes or no, if you have.

The Prisoner. Yes.

THE COURT. In that behalf, Czolgosz, what you have a right to say relates explicitly to the subject in hand here at this time, and the legal causes which the law provides that you may claim in exempting you from having judgment pronounced against you at this time are defined by statute. The first is, that you may claim that you were insane; the next is, that you have good cause to offer either in arrest of the judgment about to be pronounced against you or for a new trial. Those are the grounds specified by statute upon which you have the right to speak at this time, and you are at perfect liberty to do so freely.

The Prisoner. I have nothing to say about that.

THE COURT. Have you anything to say in behalf of the prisoner, Judge Titus?

Mr. Titus. I have nothing to say within the definition your Honor has read, as to what we can say, but it seemed to me that in order that innocent people should not suffer by this defendant's crime, that the Court should permit him to exculpate, at least his father and brothers and sisters.

THE COURT. Certainly, if that is the object of any statement that he will make.

Mr. Titus. That is what he tells me.

THE COURT. Proceed, Czolgosz.

The Prisoner. I would like to say this much; that the crime was committed by no one else but me; no one told me to do it and I never told anybody to do it.

Mr. Titus. Your father had nothing to do with it?

The Prisoner. No sir; not only my father, but there hasn't any-

body else had nothing to do with this. I never told anything to nobody; I never told anything of that kind. I never thought of that until a couple of days before I committed the crime.

THE COURT. Anything further, Czolgosz?

The Prisoner. No sir.

THE COURT. Czolgosz, in taking the life of our beloved President you committed a crime which shocked and outraged the moral sense of the civilized world. You have confessed your guilt, and, after learning all that can at this time be learned of the facts and circumstances of the case, twelve good men have pronounced your confession true and have found you guilty of murder in the first degre. You declare, according to the testimony of credible witnesses, that no other person aided or abetted you in the commission of this terrible act. God grant it may be so. The penalty for the crime of which you stand convicted is fixed by statute, and it now becomes my duty to pronounce its judgment against you. The sentence of the court is that in the week beginning October 28, 1901, at the place, in the manner and by the means prescribed by law, you suffer the punishment of death.

When Czolgosz returned to his cell after his conviction he ate a hearty supper and soon thereafter went to bed and slept continuously until midnight, when the guard was changed, when he awoke for a few minutes, and then slept again until 6 A. M., when he arose and took a short walk in the cell corridor, after which he made a careful toilet, and at 7:30 partook of a hearty breakfast. He talked freely as usual on ordinary topics, but maintained his usual silence concerning his crime and would not talk of the trial.

On September 26, he was removed from the Buffalo Jail to the State Prison at Auburn, N. Y., where he was confined in a death cell until his execution.

Here he was examined by Dr. Gerin, the Prison physician, and again by Dr. MacDonald, who found nothing to alter the previous decision of all the experts that had examined him that he was sane.

THE EXECUTION.

Czolgosz was executed by electricity on the morning of October 29, 1901. The official witnesses, consisting of the Superintendent of State Prisons, and other prominent New York State officials, several physicians, three representatives of the respective press associations, Dr. Spitzka and others and the official physicians—Dr. John Gerin, Prison Physician, and Dr. MacDonald—having been assembled in the execution room and having received the usual admonition from the Warden as to maintenance of order during the execution, the prisoner was conducted to the room a few minutes after 7 A. M. Every

precaution was taken by the Warden, who had immediate charge of the execution, to minimize the opportunity for notoriety or sensationalism on the part of the prisoner as well as to insure that his taking off should be effected in an orderly and dignified manner.

As Czolgosz entered the room he appeared calm and self-possessed, his head was erect and his face bore an expression of defiant determination. The guards, one on either side, quietly and quickly guided him to the fatal chair, the binding straps were rapidly adjusted to his arms, legs and body, and the head and leg electrodes were quickly placed *in situ* and connected with the wire which was to transmit the lethal current through his body. These preliminaries occupied about one minute. Czolgosz offered no resistance whatever, but during the preparations addressed himself to the witnesses in a clear, distinct voice in the following language: "I killed the President because he was the enemy of the good people—the good working people. I am not sorry for my crime." At this moment, everything being in readiness, the Warden signaled the official electrician in charge of the switch, who immediately turned the lever which closed the circuit and shot the deadly current through the criminal's body, which was instantly thrown into a state of tonic spasm involving apparently every fibre of the entire muscular system. At the same time, consciousness, sensation and motion were apparently absolutely abolished.

Two electrical contacts were made, occupying in all one minute and five seconds. In the first contact the electromotive pressure was maintained at 1800 volts for seven seconds, then reduced to 300 volts for twenty-three seconds, increased to 1800 volts for four seconds and again reduced to 300 volts for twenty-six seconds—one minute in all—when the contact was broken. The second contact, which was made as a precautionary measure, but which was probably unnecessary, was maintained at 1800 volts for five seconds. That conscious life was absolutely destroyed the instant the first contact was made, was conceded by all of the medical wit-

nesses present; also that organic life was abolished within a few seconds thereafter.

Czolgosz was pronounced dead by the attending physicians and several of the other physicians present, after personal examination, in four minutes from the time he entered the room; one minute of this period was occupied in the preliminary preparations, one minute and five seconds in the electrical contacts, and the remainder of the time in examinations by the physicians to determine the fact of death.

The autopsy was made by Dr. Edward A. Spitzka under the direction of the official physicians—Drs. Gerin and MacDonald of the College of Physicians and Surgeons, New York City. The examination occupied about four and a half hours and embraced a most careful, gross examination of all the viscera, attention being especially directed to the brain and its meninges. The autopsy revealed no evidence whatever of disease or deformity of any of the bodily organs, including the brain, which was normal in size, shape, weight and appearance and was well developed in all respects,—a conclusion which was concurred in by all of the physicians present, several of whom had witnessed the execution.

THE TRIAL OF THOMAS BIRD AND HANS HANSEN, FOR PIRACY AND MURDER. PORTLAND, MAINE, 1790.

THE NARRATIVE.

A strange schooner with a crew of three came into the harbor of Portland, then a part of the State of Massachusetts, in the year 1790. And when it continued to stay there the inhabitants began to wonder what it meant and to become suspicious. The three men having in their cups told some very strange stories and people who had gone on board the vessel having observed some curious things, it was determined by the authorities to make an investigation. Finding this out the men attempted to sail away and were not arrested until they had made an armed resistance. In the jail one of them, Jackson, confessed that on the High Seas they had killed the captain, taken possession of the ship and brought her to port intending to sell her and divide the proceeds and make their escape. Indicted for murder and piracy, it was proved that Bird was the most guilty one and he was found guilty and very promptly hanged.

This case is noteworthy, as being the first capital conviction in the United States Courts.

THE TRIAL.[1]

In the United States Circuit Court, Portland, Massachusetts, (Maine)[2], 1790.

June 6.

HON. JOHN LOWELL[3], *District Judge.*[4]

[1] *Bibliography.* "The Knickerbocker or New York Monthly Magazine vol. XIV. New York: Clark and Edson, Proprietors, 1839.

[2] Maine was then a province of Massachusetts.

[3] LOWELL, JOHN (1743-1802). Born, Newburyport, Mass. Grad. Harvard, 1760; Admitted to Bar 1762; Member State Legislature, 1776-1778; Removed to Boston 1777; Member Mass. Const. Con.

Thomas Bird, Hans Hansen and James Jackson had been previously indicted for piracy on the high seas and the murder of William Connor. Bird as principal and the others as being present aiding and abetting. All of them pleaded not guilty.

Christopher Gore[5], United States Attorney, for the Government.

Mr. Syms for the prisoners.

So great was the public excitement and the crowd assembled so large that the Court adjourned to the Meeting-house of the first parish, Rev. Thomas Smith, the first minister settled in Falmouth. A jury was empanelled of which Deacon Chase of Peperell, now Saco, was foreman.

THE EVIDENCE.

Walter Jordan. Am captain of the fishing schooner Betsy. In July of last year I was coming into the harbor here across Casco Bay when I observed, there being a still breeze, a schooner that seemed to be signalling for a pilot. I approached and hailed her. They answered they were the Rover from Africa, wanted a port, didn't care which and they accepted my offer to pilot them in, which I did. It was Captain Bird here. The wind went down in two days, most of the boats went out again but the Rover didn't budge. This surprised people and they began to talk. It didn't seem to have any object in coming to Falmouth, it brought no cargo and didn't seem to be looking for one. Her whole crew went ashore every day and idled and did nothing. No one could discover after all these what they were here for.

Robert Jordan. Am a fisherman on the Betsy. As to this crew didn't know nothin' about 'em. Only knew when they was piloting of her in, with the little Betsy; heard the captain tell father they come from the coast of Africa. But what they come clear from Africa here for without any cargo and were staying here so long, without trying to get anything to do, was more then I could tell.

JUDGE LOWELL. Have you

1780; Member of Congress 1782; Commr. on N. Y. and Mass. Boundary, 1784; Judge Court of Appeals, 1784-1789; LL. D. Harvard, 1792; Member of Harvard Corp. and one of the founders of Am. Soc. Arts and Sciences. Died at Roxbury, Mass.

[4] There were no Circuit Judges appointed until 1801. Judge Lowell was made District Judge, Sept. 26, 1789 and Circuit Judge, Feb. 20, 1801.

[5] He was the first United States attorney for Massachusetts and was appointed Sept. 26, 1789; see 2 Am. St. Tr. 551.

never said that you did not believe but that there had been murder committed on board of that vessel? And if so please state to the court what were the circumstances that caused your suspicions.

Jordan. Why, William and I have been aboard of her a good many times, being she lies off abreast of our house, and a number of times we have staid aboard in the evening and played cards with the men. They tell so many different stories about their voyage and talk so queer about it, that I never could tell what to make of it. They 'most always had some punch or wine to drink when we was playing, and after we'd played till it got to be considerable well along in the evening they would sometimes get pretty merry. Sometimes they said they had come right from England and hadn't been out but twenty days when they arrived here. And sometimes they said they'd been cruising on the coast of Africa three months to get a load of niggers but couldn't catch 'em. And then one of 'em says 'How many times do you think old Hodges has looked over the ship news to try to find out our latitude and longitude?' —and then he looked at the others and winked and then they all langhed.

And one time it was a pretty dark evening they had drinked up all the liquor there was in the cabin and Captain Bird told Hansen to get into the hold and bring up a bottle of wine. Hansen kind of hesitated a little and looked as if he didn't want to go and said he didn't believe but they'd had wine enough—and he didn't want to go poking around in the hole in the night. At that Captain Bird called him a pretty baby and asked him what he was afraid of, and wanted to know if he was afraid he should see Connor there. And then Captain Bird ripped out a terrible oath and swore he'd have some wine if the d——l was in the hold. And he went and got a bottle and give us all another drink. When he came back again, Hansen asked him if he see anything of Connor there. And Captain Bird swore he'd throw the bottle of wine at his head if he didn't shut up.

Another time I was aboard in the daytime and I see a parcel of red spots on the cabin floor and up along the gangway that looked as if there'd been blood there; and I asked them what that was and they said it wasn't nothin' only where they butchered a whale. And then they all laughed again and looked at each other and winked. And that's pretty much all I know about the matter may it please your Honor.

William Dyer. Am a fisherman on the Betsy. Was on the Rover with Jordan and heard all that they said just as he has just told it. When I was aboard the schooner one day noticed a little round hole in a board in the after part of the cabin that looked as if it might have been made by a bullet from a gun, and there was a parcel of smaller holes spattered around it that looked like shot-holes; took my pen-knife and dug out a shot from one of them; when I asked 'em what they'd been shooting there, Hansen said that was where Captain Bird shot a

porpoise when they was on the coast of Africa. And then they looked at each other and laughed.

Stephen H. Hammond. Am a government officer. Was ordered to arrest the people of the Rover. Took 8 men with me in a yawl; stood at the helm; two rowed and the other six stood with their guns all ready, for we looked for a fight. As we approached, we saw the schooner begin to move in a light breeze down the harbor; they had evidently discovered us and what we were after. But four of our men now took the oars and rowed so fast that we soon overhauled her. Heard Bird call out: "Hist the main sail, spring for your lives and we'll beat them." But between Cape Elizabeth and House Island we caught up again. I ordered Bird to heave to, but he kept on. Shouted that if he didn't I'd shoot him as he stood at the helm. Told my men to take good aim and fire. But Bird leaped down the companion-way as did the other two and the schooner went adrift. We then jumped on board. On looking down into the cabin we perceived the three men were armed; Bird with a musket and the others with a cutlass and handspike, and bidding defiance. I quietly closed the companion-way and having some men with me who understood working a vessel, soon beat up the harbor again and made fast to one of the wharves on the Falmouth side. The wharf was lined with people who had been watching the result of the chase and who now jumped on board in crowds and thronged the vessel. The companion-way was again opened and Bird and his men were ordered up. Perceiving there were altogether too many guns for them on board they came quietly up and surrendered themselves. On being taken to the court-house they were placed in separate rooms and examined.

John Smith. Was present when the three men were questioned in jail. The first said his name was Thomas Bird and that he was an Englishman, Hansen that he was a Swede and Jackson that he was born in Newton in this State. They had little confidence in each other, thought the others would betray him and supposing the one who made the earliest and fullest confession would be likely to receive the lightest punishment, they all confessed that the captain of the Rover had been killed on the voyage; all urged things to do away with the criminality of the deed. They agreed the vessel was owned by one Hodges in England; that their Captain's name was Connor; that they had been trading some time on the coast of Africa; that Captain Connor was rough and arbitrary and abused his men beyond endurance; and that in a moment of excitement they had sought revenge by taking his life. They all agreed, too, as to the manner in which the deed was done and as to the time and place. It was in the night-time, they were in the cabin, Captain Connor had been very abusive and overbearing and Bird who was more highly provoked than he could bear, caught up a gun which stood in the cabin, loaded with ball and shot Connor dead on the spot. They were then ex-

ceedingly frightened and tried to dress his wounds and bring him to. But there were no signs of returning life and they took him on deck and threw him into the sea. They were afraid to return to England with the vessel and after consultation they concluded to come to the United States, dispose of such articles as they had on board, sell the vessel the first opportunity they should meet with and separate and go to their respective countries.

James Jackson (who had been allowed to become State's evidence) confirmed the story as related by the last witness.

The *Counsel* on both sides addressed the Jury and the JUDGE charged them. They retired and in a short time returned with a verdict of *guilty* as to Bird and of *not guilty* as to Hansen.

Mr. Syms moved in arrest of judgment, because the latitude and longitute of the sea where the crime was alleged to have been committed was not stated in the indictment, which was overruled and the prisoner Bird sentenced to death by the COURT.

Bird's counsel sent a petition for a reprieve or pardon to the President, then residing in New York, but Mr. Washington refused to interfere with the sentence of the court and the prisoner was hanged by Marshal Dearborn on the last Friday of the same month of June, 1790.

THE TRIAL OF LEVI AND LABAN KENNISTON, FOR ROBBERY, IPSWICH, MASSACHUSETTS. 1817.

THE NARRATIVE.

Major Goodridge was a person of previous good character and respectable standing who professed to have been robbed of a large sum of money on the night of December 19, 1816, on the road between Exeter and Newburyport on his way from New Hampshire into Massachusetts. Among the proofs of the robbery was a pistol shot through his left hand received, as he said, before the robbers pulled him from his horse; he and one of his assailants discharging their pistols at each other at the same instant. He was then, according to his account, dragged from his horse and across a fence into a field, robbed and beaten until he was senseless. On his recovery he went back to the toll-house on the bridge where he appeared to be for a time in a state of delirium. But he had sufficient self-possession to return to the place of the robbery with some persons who accompanied him with a lantern where his watch, papers and other articles were found scattered on the ground. On the following day he went to Newburyport and remained there ill at intervals in a state of reason or simulated frenzy for several weeks. Having regained his health he set about the discovery of the robbers; and so general was the sympathy for him in a very orderly community, that his plans were aided by the innocent zeal of nearly the whole country-side. His first charge was against the Kennistons, two poor men who dwelt in the town of Newmarket, New Hampshire, on the other side of the river. In their cellar he found a piece of gold which he identified by a mark which he said he had placed on all his money and a ten-dollar note

which he also identified as his own. The Kennistons were arrested, examined and held for trial. He next charged the toll-gatherer, one Pearson, as an accomplice; and on his premises with the aid of a witch-hazel conjuror he also found some of his gold and papers in which it had been wrapped. Pearson was arrested, examined before two magistrates and discharged. He then complained against one Taber, a person who lived in Boston. Finally he followed a man named Jackman to New York in whose house he swore that he also discovered some of his marked wrappers. Jackman was brought into Massachusetts and lodged in jail. He and Taber and the Kennistons were indicted for the robbery in the County of Essex.

So cunningly had this man contrived his story and arranged his proofs that the popular belief was entirely with him. The witch-hazel part of his evidence probably did not disincline the populace to believe in him and it was said that there were few members of the county bar who did not regard the case of the Kennistons as desperate. Some however believed Goodridge's story to be false, and these persons sent for Mr. Webster to undertake the defense of the accused. The Kennistons had nothing on which to rely but their previous good character, the negative fact that since the supposed robbery they had not passed any money or been seen to have any, and the improbabilities which their advocate could develop in the story of Goodridge. The theory of the defense was that Goodridge was his own robber and had fired the pistol shot through his own hand. But when all the evidence for and against Goodridge's narrative had been drawn out, and it came to the summing up there remained two obvious difficulties in the way of that hypothesis. One of them was that no motive had been shown for so strange an act as a man's falsely pretending to have been robbed and charging the robbery upon innocent people; the other that the theory of Goodridge being himself the robber, apparently made it necessary to believe that he had proceeded, in his fraudulent manufacture of proofs, to the extremity of shooting a

pistol-bullet through his own hand. These were very formidable difficulties; for the law of evidence, as administered in our criminal jurisprudence, very properly regards the absence of motive for an act the commission of which depends on circumstantial proof as one of the important things to be weighed in favor of innocence; and as to the shooting, it was certainly in a high degree improbable that a man would maim himself in order to maintain a false statement that he had been robbed and maimed by someone else. But in grappling with these difficulties Mr. Webster told the jury that the range of human motives is almost infinite; that a desire to avoid payment of his debts if he owed debts, or a whimsical ambition for distinction, might have been at the bottom of Goodridge's conduct, and that having once announced himself to the community as a man who had been robbed of a large sum and beaten nearly to death, he had to go on and charge somebody with the act. This was correct reasoning, but still no motive had been shown for the original pretense; and if there had not been some decisive circumstances developed on the evidence, it is not easy to say how this case ought to have been decided. His story was that the pistol of the robber went off at the moment when he had grasped it with his left hand. Yet according to the testimony of the physicians who attended him there were no marks of powder on his hand; and the appearance of the wound led to the conclusion that the muzzle of the piece must have been three or four feet from his hand, while there were marks of powder on the the sleeve of his coat as well as the hand. This state of the evidence justified Mr. Webster's remark that "all exhibitions are subject to accidents. Whether serious or farcical, they do not always proceed as they are designed to do." Goodridge, he argued, intended to shoot the ball through his coat-sleeve and it accidently perforated his hand also. This discredited his story more than anything else and convinced the jury that if he found any of his money on the premises of the Kennistons, he placed it there himself.

The Kennistons were acquitted; Jackman was put on trial

at the next term of the court and the jury disagreed. At his second trial, Mr. Webster defended him and he was acquitted. These criminal proceedings were followed by an action for a malicious prosecution instituted by Pearson against Goodridge. Mr. Webster was of counsel for the plaintiff in this case. The evidence was now still more clear against Goodridge; a verdict for a large amount was recovered against him and the public at last saw the fact judicially established that he had robbed himself.[1]

THE TRIAL.[2]

In the Supreme Judicial Court, Ipswich, Essex County, Massachusetts, April, 1817.

HON. SAMUEL PUTNAM,[3] *Judge.*

April 23.

An indictment having been found by the Grand Jury of the County against Levi and Laban Kenniston and Richard Taber for, in December 19, 1816, having committed an assault upon Elijah Putman Goodridge and robbed him of bank bills of the value of $1080 and of gold coin of the value of $550, the two Kennistons were arraigned in court and pleaded not guilty. Taber was not arraigned.

Daniel Davis,[4] Solicitor General for the Commonwealth.

[1] This Narrative is taken from Curtis' Life of Daniel Webster, Vol. 1.

[2] *Bibliography.* "Report of the evidence at the trial of Levi and Laban Kenniston before Hon. Samuel Putnam, on an indictment for the robbery of Major Elijah P. Goodridge, December 19, 1816. Salem: Printed by T. C. Cushing, 1817."

"The Sham-Robbery, committed by Elijah Putnam Goodridge, on his own person, in Newbury, near Essex Bridge, December 19, 1816, with a history of his journey to the place where he robbed himself, and his trial with Mr. Ebenezer Pearson, whom he maliciously arrested for robbery. Also the trial of Levi and Laban Kenniston. By Joseph Jackman. (Copyright secured according to law.) Concord, N. H.: Printed for the author. 1819."

[3] See 2 Am. St. Tr. 108.

[4] See 88 Am. St. Tr. 874.

Daniel Webster[5] and *Stephen L. Knapp* for the prisoners.

Mr. Knapp moved that Taber be tried separately.

The COURT granted the motion.

April 24.

The following jurors were selected: Oliver Emerson of Methuen, *Foreman*, James Ayer of Haverhill, George Bridgeo of Marblehead, Richard Chute of Rowley, William Carr of Newbury, James Dennison of Gloucester, Jonathan Dodge of Beverly, Ernest A. Ervin of Salem, Peter French of Andover, Daniel Friend of Manchester, Samuel Giddings of Ipswich, and Charles Greenleaf of Newburyport.

The Solicitor General observed to the Court that this cause had excited much conversation and feeling, especially in that part of the county in which the Robbery was committed, and he wished the Jurors might be asked whether any of them had formed an opinion in the case.

THE COURT then requested any of the Jurors who had made up their minds to rise and state it—none rose.

The *Solicitor General* remarked, that the Jurors from Newburyport and Newbury probably must have heard considerable conversation on the subject, and moved they might be sworn to make answer.

They were sworn, and declared they had formed no opinion. The *Jury* was then impanelled.

THE SOLICITOR GENERAL'S OPENING.

The *Solicitor General*, in opening the cause on the part of the government, explained to the jury the laws of the Commonwealth against robbery, the nature of its amelioration from the severity of the law formerly existing against this crime, when it was punished with death; but whether the community were injured or benefited by the change, it was not proper for him to discuss, nor the jury to consider.

He then pointed out to them what he thought their duty in trials of this nature and importance to society, and proceeded to state the particular facts he expected to prove in this case: That Major Elijah Putnam Goodridge, of Bangor, in the District of Maine, was on the evening of the nineteenth of December last, travelling in Newbury, near Essex Merrimack Bridge, and pursuing his journey at an easy rate, was assaulted and wounded, and robbed of large sums of money as had been named in the indictment just read to them.

He expected to be able to prove, he said, beyond a reasonable doubt, that the prisoners were engaged in this act of outrage and violence on the person and property of Major Goodridge—for the

[5] See 7 Am. St. Tr. 414.

prisoners were on the afternoon previous to the robbery at Newburyport, within a short distance of the place where it was perpetrated; and were seen the same evening under very suspicious circumstances; and he should further prove that, since that time, on a thorough search in the dwelling-house of the Kennistons, that there had been found papers and bills, and gold coin, which Goodridge could identify, and had identified to be his, and which had been taken from him at the time of the robbery.

Other strong and corroborative circumstances—such as their agitation and partial confessions, when charged with the crime, he should comment on after the jury had heard the evidence he should produce. He did not think it necessary to proceed further in the opening, but would now call his witnesses.

THE WITNESSES FOR THE COMMONWEALTH.

Major Goodridge. Robbery took place on the nineteenth of December; I was robbed of $1086 in bills and $669 in gold, my own property—doubloons, Louis d'ors, guineas and a piece of gold bearing an emblem of the French Republic. I also had money belonging to others from $300 to $500. I set out from Bangor in a single sleigh, travelled with no one and saw no suspicious persons till I arrived at Alfred. Stopped there because I did not like to travel after dark. Met a man I now believe to be Reuben Taber who had an opportunity to see my baggage. Next day I left Alfred and met with nothing material till I reached Exeter. Sleighing being bad concluded to pursue my journey on horseback. Stopped at Smith's tavern in Exeter, put up my horse and left my pormanteau, valise and trunk with the bar-keeper. Applied to Mr. Odlin for a second-handed saddle. He obtained one for me. After dinner I requested the young man who kept the bar to show me into a room, saying I wished to shift my clothes. My real object was to put my pistol in order. I had just drawn the old charge, and recharged with powder, and was scraping a ball which happened to be a little too large, when the young man interrupted me; then thought there would be no further use in concealment, and told him I had money. He told me he had balls that would suit my pistol; returned immediately with a parcel of balls in his hand, followed by several strangers, and some in the entry were looking at me; finished charging my pistol, and went out into the bar-room for my portmanteau, leaving the pistol on the table charged; was detained some time in settling my bill, and was then called back to pay for the balls, the young man saying he had not been paid for them, and was again detained in making change. My horse was soon ready and brought to the door. When I mounted him the people were laughing.

Found my pistol placed with the muzzle toward my leg—shifted it and proceeded on my

journey; reached Kensington soon after dark. I missed my way, going through Salisbury; paid my toll and crossed the bridge a little before nine in the evening; was rising the hill, about a quarter of a mile from the bridge, when the attack was made. A person jumped from the side of the road—caught the horse, presented a pistol, and demanded my money; asked him to wait till I could get it from my portmanteau; then, under pretense of getting my money, seized my pistol, cocked it and with my left hand tried to knock away his; was in the attitude of firing, when he fired. At the same time saw two other persons approaching. Whether I fired my pistol I cannot tell; lost all recollection till I found some persons dragging me into the field; cried for help; they tried to choke me, finally ceased to resist. They stripped me, turned me and left me. Cried for help, they returned, got me down and left me senseless. Have no recollection of what took place after till I found myself at the bridge, badly wounded on my side, great pain in my head from blows, my left hip sprained, a shot through my left hand. I had a glove on. The first man I recognized at Mr. Pearson's at the bridge was Mr. Potter. He had found my pocket-book and portmanteau and many of my things. He asked me if they were mine; told him they were mine and requested him to keep them for me. Saw Mr. Way who offered to assist me. Requested him to go to Danvers and inform my friends Page and Fowler of my situation. Next day saw Mr. John Pearson who brought with him Dr. Spafford. Was removed the same day to his house in Newburyport; was attended by Dr. Spafford three or four weks. Heard of Reuben Taber first from Page, who referred me to a Mr. M'Kenniston for a particular description of him. He told me of Taber's haunts and thought something might be got out of him. Went afterwards to Boston, began to look after Taber and met him near Bowden's tavern, selling combs. Asked him if his name was Taber, he said yes. Asked him if he knew the people who lived east and west of the Newbury bridge, he said he did; told him he might possibly point out the robbers. Said he had formed an opinion, it would be more than his life was worth but if I would give him three hundred dollars he would tell me all he knew. My friends, Mr. Jones and Mr. French, advised me to disguise myself and get near Taber in that way. I did; met Taber near Ann street; he agreed to give the names of those concerned for four hundred dollars and trust to my honor for the payment in case the information proved correct. He told me the prisoners were two of those concerned and they had some of the money if they had not spent it. Went to Danvers and communicated these particulars to Mr. Page and he consented to assist in the search and apprehension of them. Went to Hampton with Mr. French and stopped at Langmaid's; sent for Mr. Pike and sent him to New-Market to see if the Kennistons were at home. Mr. Langmaid went to engage Major Leavitt as vigilant officer. We went next

morning with the officers, Major Coffin, and Mr. Towle, entered the house and arrested the prisoners for robbery. Mr. Upton, pointing at Laban the youngest said, "he is the guilty one, keep your eye on him." Was convinced they were not the persons who made the attack—they were small.

Proceeded to search, and found part of my money; heard Leavitt say he had found some counterfeit money; replied, it was not mine if it was counterfeit. Afterwards, at Major Coffin's house, Major Leavitt took out of his pocket a ten dollar bill, which I knew, by the name written on the back in my own hand writing, to be mine: the name was James Poor, and it appeared to be partly erased.

Major Leavitt received a paper from the hand of the justices sealed and containing a bill. [*Major Leavitt* swore to the paper, and *Goodridge* to the bill.] This bill I brought from Bangor, and never saw it afterwards till I saw it in Major Leavitt's hands, at Major Coffin's, and was robbed of that with other bills. While at Kenniston's we searched the house thoroughly and found nothing but small parcels of silver. Leavitt went below to search the cellar; a pair of pantaloons was hanging at the head of the bed; went to the pantaloons, took out a small pocketbook. opened it and found one dollar, and some silver and a doubloon.

We afterwards made search in every part of the cellar, dug it where the soil was loose, and removed stones in the wall. Upton called suddenly, "I have found the hoard!" Leavitt and other persons then came down, and Leavitt picked up another doubloon; one of them was covered and had my marks; previous to our finding this money in the cellar, a number of the neighbors had collected. We searched as critically as possible and found nothing material, except in a drawer a tin dish, containing from 20 to 40 dollars. The prisoners disavowed it. Found covers of the gold at Pearson's on the island in the necessary vault with my figures upon them. At New York in possession of Joseph Jackman I found very much torn some of the covers of gold and a part of the receipt of Thomas Curtis, which was with me when I was robbed; they were scattered among the rubbish on the floor of the room where Jackman slept. Believe Taber to be the man who took my horse by the bridle.

Mr. Webster. At what time were you at Alfred? I do not remember; think it was the 17th, the night before I came to Exeter. Had you any conversation with the person you supposed to be Taber? I conversed with him, and the landlord, some by firelight. Did he, Taber, describe the individuals accurately? He did; I had the impression they were larger men. When did you leave Bangor? About 10 or 12 on Wednesday, I think. Did you meet anything to alarm you till you reached Alfred? No and not then. Did not you load and unload your pistols every day on your journey? Yes.

How came you to arm yourself in this way? Did you ever hear of any robberies in the dis-

trict of Maine Yes, I heard just before I came away, of a man's shooting a robber in the woods, in Augusta, which proved to be his landlord; and afterwards being conscience-struck, went into court and told the affair, and the court dismissed him, approving his conduct. Was this, then, Major, your motive for arming yourself? tell the jury, Major. It was one motive. Did you ever hear of any more robberies in the District of Maine? Yes, one of a Mr. Cutts, in Saco woods. These then, Major, were your reasons? Yes.

What conversation with the suspicious person at Alfred? The landlord's son and myself were talking about lumber and shipbuilding. This person was by, and appeared acquainted with the subject. Did you say anything about your property? No. Did you ever tell them there to be careful of your portmanteau? Yes; I told the young man, as he was putting it into the sleigh, to be careful of it. How came you to do so then, as you were departing? I was afraid that the pistols might go off. Did you ever load your pistols in the presence of any one, till you reached Exeter? No. Did you ride any part of your journey in the night? I did not. How happened you then to ride on the night of the 19th? Because I considered myself out of danger. What did you do to find your money? I have stated already. Did you never apply to conjurors, magicians, necromancers, witches, witch-hazel and metallic rods? I did apply ——Speak, Major, tell the jury. I did apply to a Mr. Swinington of Danvers, and we searched the island with metallic rods. Did you really believe, Major, that these things would enable you to find your money? I did if properly prepared. Were there any visible marks of violence upon your person? There were upon my hand, side, &c., some one jumped upon me. Do you feel any bruises now? I do not. How long before you were recruited? About six weeks. Was you present when the covers of the gold were found at Pearson's? I was. Was any person present when your papers were found in Jackman's room at New York? Yes —the police officers. Where were they found? On the floor of the room where Jackman slept, loose, with other rubbish. When was the search made? On the 12th or 13th of this month. Why was it not done before? Because it was not convenient. Have you returned to Bangor since this affair? No—I have remained about here. Why have you let Jackman rest so long? My friends engaged to write to New York about him. When did you first see the ten dollar bill, found in the drawer of the Kennistons? I did not see it till I reached Major Coffin's house. Of whom did you receive the gold? It had been laying by for about a year. How long had you been collecting the bills? A short time. Of whom did you receive this paper money? I had received three hundred and seventy dollars, by a draft on a Mr. Goodhue. What became of the proceeds of this draft? I paid some debts in Bangor. Then this could not have been a part of the money you took away, could it, Major? (The answer was confused.) I ask you again,

of whom you received this gold? Last summer I received a hundred dollar bill, which proved to be bad; I returned it to the man of whom I took it, and he gave me gold. How did you carry your money? I carried the bills, all except about one hundred dollars, in a cambric handkerchief, attached to my body under my inner waistcoat, next to my skin, and the gold I carried in a shot bag in my portmanteau. Was the whole taken from you at the first attack? I presume on the first attack; they searched my pockets, and took my pocket book, but I am not certain whether it was the first or second time. Did you ever examine your coat? No. What was the first thing you recollected after the fire? I have stated that, the first thing I recollected, they were dragging me over the fence, stripping me in the field and choking me. As near as you can recollect, when did you come to possession of your senses? The first of my perfect recollection was, when I was with Potter. Did you recognize Taber, when you saw him at Boston, to be the same man you saw at Alfred? I do not know positively. What method did you first take to find Taber? I enquired at taverns, cellars, &c. Did you never hear that Taber was in jail? I never did. Did any one point him out to you? I knew him by the description I had of him. What did Taber tell you? At first he appeared alarmed, but said, for 300 dollars, he would tell me all he knew, and appointed a meeting, but failed in his engagement. I entered into a positive engagement not to trouble Taber, who, however, never acknowledged any concern in the affair. Have you suspected any other persons? Yes, Mr. Pearson, by information received from Taber. Did Taber say he knew the Kennistons, and had seen them frequently? Yes, he had seen them frequently.

William Potter. I drove the stage that night. After I arrived in Newburyport, heard of the robbery and went to the island —saw Major Goodridge there. He opened his eyes, reached out his hand, and said he was among robbers. He requested me to go and search for some of his things. I went with Mr. Jackman and a Mr. Bradshaw. In the road we picked up his whip, and two rods further, one of his pistols; then we found his portmanteau, valise, money, papers and bills, to amount of 36 dollars, and a bunch of bills with a bandage. He asked for his memorandum, to see what he had lost; there every thing was minuted. Dr. Carter wished to have his hand dressed and sent after a watcher. The things were tied up and given to Mr. Pearson.

Cross-examined. Major Goodridge appeared distracted—said he was among robbers, but at length consented to have his hand dressed. Persons could be seen from the road where the principal things were found. He appeared out of his mind, lying on the floor; attempted to rise up but could not. I passed a wagon near the place of robbery just before I reached High street; saw three men going by the fence on the road from Newburyport.

Major Samuel F. Leavitt. Am

a deputy sheriff; ascertaining that the Kennistons were at home, took Mr. Towle, entered their house, arrested Levi and enquired for Zebulon. Levi then said, "What have you arrested me for?" I told him; he then said, "You cannot want him, for he was in Vermont at the time of the robbery; it was Laban who was with me that night." We struck out the other name and put in Laban's.

Zebulon came and said we might search his house if we wished; we should find nothing but poverty there. We proceeded to search the house in the room where the prisoners then were; nothing was found but some small pieces of money—nothing that Major Goodridge owned.

Proceeded for the bed-room; searched a chest of drawers; in a second drawer found a ten dollar bank bill, rolled up as carefully as if it was to be put into a ladies' thimble. Believed it counterfeit and threw it back again; went down into the cellar, found nothing. I was then called up, hearing that those above had found the doubloon in the father's pocket book. It was in Major Coffin's hands.

Levi and Laban said they did not know of their father's having any gold. Goodridge and Upton then went into the cellar to search, and soon after I heard a cry, "Secure the prisoners, we have found more money." Went down and saw Goodridge holding the candle over the place, and Upton hold up a doubloon to view. Felt under and found one piece more. The piece I found was covered, and had Major Goodridge's marks upon it.

John Upton. Was called upon by Mr. Page to assist in the search and apprehension of the robbers. Searched the western, eastern and back part of the house and bedroom. Laban looking into the bedroom appeared much agitated. At the head of the bed was an old pair of pantaloons; took out the pocket-book and found a doubloon there.

Mr. Webster. Who was down the cellar with you when the money was found? I think Major Leavitt and Goodridge.

Davis. What was the size of the cellar? Twenty feet by ten —about that. Did Goodridge go near the meat barrel when the money was found? I did not see him, he was searching the other side.

JUDGE PUTNAM. Had Goodridge been in the cellar before? Not to my knowledge.

Mr. Webster. How long was you in the cellar? Perhaps an hour. What time did you go to the house as near as you can remember? The sun was two hours high.

Daniel Coffin (recalled). When the pocket-book with a doubloon was found it was shown to the prisoners who were asked whose it was. They said their father's.

Mr. Webster. Was there no door fastened in the Kenniston house against you? No, there was no fasten to one of the inner doors. Did not hear anything of the ten dollar bill being found at the house of the Kennistons'.

Gardner Towle. I did not assist in the search; asked Levi why he sweat so much; he said it started him to see so many people there.

John Pike. I went to Langmaid's at the request of Mr. Upton; Goodridge requested me to go and see if the Kennistons were at home. We went and arrested them; I had the custody of the prisoners. I heard Upton cry out, "secure the prisoners—we have found the hoard." I then said to the prisoners, "You had better not stand out, for how could this money be here?" Levi said, "father is a cunning man, perhaps he put it there," and Laban said, "he married a rich wife, and perhaps she brought it." Afterwards, at Newburyport, Levi said, "do you talk with Taber; for if he will tell what he knows I shall be clear."

Samuel R. Caldwell. I saw the Kennistons the day of the robbery. Levi called at my father's house, with a horse which was put up. He went away, and the prisoners returned about dark, and enquired what time we shut up, saying, they were going to take a cruise, and should want lodging; would be back by ten o'clock. I saw them about seven at the gate, talking with a third person. Next morning I saw them in the stable conversing together. About half an hour after Levi came into the house and said, "Well—I am glad I was not there" and one drop of sweat started from under his eye. Asked him where he stayed last night. he said at Mr. Titcomb's cellar.

Ephriam Titcomb. Know the prisoners and saw them the day of the robbery. Laban Kenniston had no money after the robbery. About seven o'clock they both went out of my house and were gone until after ten o'clock in the evening. Then they returned and stayed all night. I was unwilling to let Laban go until my bill was paid. Levi said I might take the turkey which he brought with him the day before and produced a two-dollar bill and settled with me.

MR. KNAPP'S OPENING FOR THE DEFENSE.

Mr. Knapp. May it please the Court, Gentlemen of the Jury: The long, minute, and various evidence produced on this trial, on the side of government, must have been a great tax on your patience. It must be still further taxed in your attention to the defense of the prisoners at the bar; for this defense, with the greatest attention to brevity, must, necessarily, be somewhat long. While human nature is constituted as it is, and our civil institutions continue, the enlightened among our fellow citizens must, at times, be called to pass between the Commonwealth and those unfortunate persons who may be accused of crimes. This is sometimes a painful prerogative, and a laborious and irk-

some duty, from which the timid shrink, and which feeble minds fear to discharge. But a full and faithful performance of this duty, gentlemen, only requires the exercise of those virtues so necessary in the common affairs of life—firmness, independence of mind, patience in research, and candor in judgment. Firmness is required as an everyday virtue to support with equanimity the vicissitudes of life, but its sturdiest efforts are all wanted when we are called to act and decide, when action and decision will essentially affect the interests, characters, or liberties of others. This firmness of mind you this day need. Your station this day requires a spirit of independence; not that independence which springs from harshness and insensibility, but that which is formed of the blended excellencies of enlightened mercy and intrepid justice, which always exhibits a respectful fearlessness of those clothed with authority, and a disregard of the frowns or smiles of enemies or friends. This independence your country and the prisoners expect from you, gentlemen, in the discharge of your duty on this trial. If you look entirely to the law-officer and the court, you become mere creatures of the government, and woe betide the unfortunate prisoners at the bar; and if you catch your inspiration and make up your determinations from the ever changeful dispositions of the public, the laws may sometimes be trampled upon with impunity, and sometimes executed with a blind fury, from an inordinate abhorrence of wickedness, and in the extravagant desire to do good. Calmness precedes just opinons; and moderation is always mixed with satisfactory decisions. You will find a great share of patience necessary to investigate so perplexing a mass of testimony as has been, and will be offered you on this trial; but on this patience the prisoners can safely presume—and they have no doubt that every circumstance which has a bearing on the case will be properly examined by you. To this patience, gentlemen, we trust you will add candor, to meet this serious question with a purity and elevation above the mists of prejudice, and the influence of narrow and partial views. At the first recital of a tale of

robbery like this, every one feels horror and detestation at such an atrocious deed, and vents a burst of indignation at the perpetrators of it. The mind in such excitement is naturally inclined to credulity; and passion is always hasty in forming an opinion; for to the fevered mind calmness, doubting and enquiry, seem dullness, if not villany. You have declared, gentlemen, and we have no reason to doubt your declaration, that you have not formed an opinion on the guilt or innocence of the prisoners; but you will, I believe, as honest men, feel it a duty to pass a thorough self-examination, to be certain that no biases, half-formed opinions, wishes, or partialties, have an influence on your conduct on this trial. In every action in life, in every hour of his existence, a silent and constant prayer ascends to heaven from the heart of the good man, that he may think rightly and act well. The Solicitor-General has said his was a painful task in this prosecution—the Counsel for the prisoners have quite as painful a duty to perform; but one from which they will not shrink.

Levi and Laban Kenniston, prisoners at the bar, are indicted for robbing Elijah Putnam Goodridge, on the night of the nineteenth of December last, in Newbury, near Essex Merrimack bridge. To this indictment they have pleaded not guilty, and put themselves on their country for trial; which country you are. It is incumbent on the government to show you, gentlemen, beyond a reasonable doubt, that the prisoners perpetrated the crime of which they are charged. If the testimony on the part of the government is confused, contradictory, and unsatisfactory, varying in the particular circumstances which are adduced to show the guilt of the Kennistons, then you will be directed by the court to say that they are not guilty; for every contradiction or uncertainty must weigh in their favor. We shall now, at the threshold, open to you the nature and extent of our defense; if it appears strange and cruel to you in the commencement, do not be startled, for it is brought forward in the sincere conviction that it is our duty so to do. It shall be pursued with candor and fairness, but at the same time will certainly

be insisted upon with tenacity and confidence. The first point then in our defense is—*that the robbery is fictitious;*—counterfeited for reasons and motives, which can only be conjectured by us: for we can only conjecture the motives of the cheat, the incendiary, the gambler, and the suicide. The motives of wicked men dwell in the inmost recesses of their hearts, and can only be fully known by an avowal; and then not always comprehended by the honest and elevated. The circumstances which we shall show to prove the correctness of this position, *the counterfeit robbery,* are the following—That Major Goodridge passed Essex Merrimack bridge about fifteen or twenty minutes before nine o'clock on the evening of the 19th of December last past, on horseback, and in about three quarters of an hour returned on foot to Mr. Pearson's house at the bridge, without a hat, wounded in the hand, apparently in a wild and distracted state of mind, raving against robbers, charging every one he saw with having robbed him. After the good people of the neighborhood were collected by the humanity of Pearson, Goodridge insisted on going to the spot where he said the robbery had taken place; but just as he reached the "bloody arena," the Major's sensibility was so exquisite that he sunk senseless, and was brought back by three of the witnesses whom we shall produce; they placed him on the floor with a pillow under his head, and the by-standers exclaimed that he was dead. At this time Doctor Carter, who had been sent for by Mr. Pearson, examined the Major's pulse and found them strong and regular, and assured the people collected that he was not dead nor dying, for his pulse were as good as theirs. This seeming derangement continued, and he repeatedly refused to have his hand dressed, still continuing, by turns, faint and senseless, or wild and delirous, until Mr. Potter, whom he had previously known, came from Newburyport to see him, (where Mr. Pearson had sent intelligence of the event) and with others to assist in detecting the perpetrators of the outrage if they were to be found. Goodridge then came to his senses, knew Potter, gave him some account of the robbery,

requested him to go to the ground on which he stated the affair took place, particularly mentioning his valuable watch, pocket-book and other things. Potter and others went as directed, and on the brow of the hill this side of the bridge found a whip, and a pistol, both marked with blood. From his own account the pistol was, when fired, in his right hand, and must have instantly dropped when he received the blow on the head; the whip must have fallen before. How came these stained with blood? Just over the fence, a few feet from the road, were found the port-bags, valise, linen, gold, silver, cents, bullets, one bank bill, and papers, strewed all over the ground, and near the fence his watch and pocket-book. These things were brought to Goodridge, who acknowledged them as his, and named a memorandum of every thing he had with him—this paper was found, which he knew, when it was shown him. Goodridge then consented to have his hand dressed, which was done by Doctor Carter, and his body and head searched for the grievous wounds and bruises of which he so incessantly complained as extermely excruciating; but the surgeon, after a strict examination, could discover neither bruise, laceration nor stabs, nor, wonderful as it may seem, the least discoloration of the skin; and nothing, save a small scratch on the left arm, which was too inconsiderabl for surgical attention. Another physician was called to consult on the case, and by him, we shall show that the Major requested to be turned in his bed—and while they were attempting to do it in as gentle a manner as possible, he screamed as if for pain, calling on them to despatch him that he might be free from such misery. They thought proper to desist and did not turn him.

His conversation was then wild and incoherent, while they were looking at him, but when, by a little finesse on the physician's part, Goodridge thought he was not observed, he raised himself in bed with perfect ease, adjusted his hair, expectorated with strength, and moved about with convenience, as one well and rational; but, on the sound of footsteps, he relapsed into wildness, complaints, and seeming anguish:—

from which circumstances, in the mind of the physician, an irresistible conclusion followed, that the madness was counterfeited, and the whole business was an imposition. The physicians observed that the Major passed from calmness to frenzy, from syncope to paroxysm;—

> "While his pulse, as yours, did temperately keep time,
> And make as healthful music."

On the 20th of December a third physician examined the patient, and found no mark of violence about him save the wound in the hand; and he is of opinion, that the wound was made in the direction it would have been if made by himself; for the inside of the sleeve of the surtout was burnt with the powder, which would not have been the case had the hand been turned to strike away a presented pistol, as stated by the Major. In that case the outside of the sleeve would have borne the marks of the injury:—And this same physician will state that his patient passed from pain to tranquillity, and from insanity to reason, with unaccountable facility, and he thinks it only possible, but not probable, that so much injury could be done to a man with no external marks of violence about him. From this very witness we expect to obtain a clue to the indiscriminate zeal and violence with which Pearson and others were pursued; for the witness whispered in the Major's ear that his reputation suffered by the suspicions which were entertained of the reality of the robbery. The Major then fell to vindicating himself with cunning and craft, with complaints and oaths, search-warrants and officers, until he carried confusion and dismay wherever he went. The arrow went beyond the mark; for the good people began to think that honesty was never so violent.

From several witnesses it will clearly be made out to you, that within fifteen or twenty minutes after Goodridge crossed the bridge on horseback, two teams and the mail stage followed, and went within a few feet of the place where the portmanteau, valise, pocket-book, and other articles lay, and the scene of the struggle, as he says, when he sprang upon

one of his robbers, and overpowered him, until the associate myrmidons came to his resuce. The teamsters were grave and sober men, who walked slowly behind their wagons as they ascended the hill, and, as the evening was very still, could have heard the slightest noise or groan, had they been made. They heard no noise—all was as still as though the Major had been at Bangor, and the Kennistons at New-Market. This we think no trivial circumstance, but sufficient in the minds of the most credulous, "to hang a doubt on." Another reason we shall offer for disbelieving the narrative given by Goodridge himself is, that it contains many improbable particulars, and has not always been uniform and consistent.

The whole story of Taber, we shall convince you, was sheer fabrication, destitute of the least shadow of probability—made as a fetch, and will end in nothing. Taber, we shall prove by documents and witnesses, was, at the time of the robbery, and long after, at Boston, confined within the limits of the jail-yard. This will prove what is called in the language of the law, an Alibi. For Jackman we expect to prove, that he was at a neighbor's house, spending a social evening, on the nineteenth of December last.

Our second point in the defense is, *that if the robbery of Goodridge was not feigned,* the Kennistons did not commit it, because they had no means of getting information that a person was to pass burdened with cash at the time; and it is well known, that so few travel on horseback with any considerable quantities of money with them, that it would be ridiculous to attack travellers promiscuously for the purpose of plunder. Laban Kenniston, one of the prisoners, had been at Newburyport for several weeks before this nineteenth day of December, and Levi Kenniston reached Newburyport from New-Market about two o'clock the same day, to assist his brother in returning home. About the same hour of the same day the Major flourished with his pistols at Exeter, New Hampshire. The Kennistons were about Newburyport the evening of the 19th of December, and the next day, without

fear or anxiety, having no money beyond a small bill. We dwell with no small degree of security on the single fact, that it cannot be shown that these poor fellows expended a dollar for any articles of necessity or pleasure, from that day to the fourth of February, when they were arrested. The minute relation of the facts respecting the money found at the house of the Kennistons, bears on its face all we want to show—their innocence; honesty and credulity were duped by management and perseverance. This game has been played before and since. Another circumstance I would ask you to consider, for it is one that had great weight on my mind, and I believe it will have on yours—and that is—that the Major instantly recognized by some mark, letter, or number, every piece of paper, cloth, bill, etc., which was found in the several searches, and which, he says, were taken from him on the night of the robbery. Do you, gentlemen, have ear marks on every thing you carry about? Would it not be possible for you to lose a receipt or money cover, or a small rag, without being able to identify it? Can it be believed, that if the prisoners had been the successful robbers they would have been so prudent; or would have hid such little parcels of money in such places as they were found in? It is a fact worth your consideration, gentlemen, that not a cent has ever been discovered in any search, until the Major had first reconnoitered the ground, and had an opportunity of performing a spell of divination, either the solemn foolery of the witch hazel rod, or some other sleight of hand. His assistants were deceived. The character of the Kennistons you will have from the mouths of their neighbors. They are men ignorant and humble; not sufficiently wise to plan, or bold and efficient to execute, an highway robbery. Such an art requires bold, cautious and intrepid villains. A feeble minded, sneaking rogue may rob a hen roost, or rifle a water-melon bed, but is never found clapping a pistol to a gentleman's head on Hounslow heath, or demanding a purse at Bagshot.

Gentlemen, we will not exhaust your patience in the opening, but will leave numerous other circumstances in the

case for your consideration hereafter, when you come to form your opinion of the guilt or innocence of the prisoners. If you take all the circumstances of this affair into view, and can account for Goodridge's whole conduct from Bangor to Newbury, and find it a connected, reasonable, and explicit narrative, our positions and our inferences may be wrong, and I trust you will see him justified; but, if you think with us, that every part of the story bears the marks of confusion, improbability, fraud, and imposition—and that the honest have been gulled, and society convulsed, by a fictitious and wicked tale—let it have the full operation on your independent minds:

"Let it work;
For 'tis the sport to have the engineer
Hoist with his own petard."

In this cause we invoke no weeping pity, no forgiving charity; we make no idle parade of feelings, no exhibitions of distress, nor attempt to portray the loss of liberty, dearer to a freeman than life;—nor even describe the horrors of perpetual imprisonment, which most of you would dread more than death. The prisoners only ask of you that justice our wise and mild laws pledge to the humblest citizen in the community—and which partakes of the spirit of that justice which is above all human influence, and which you expect from your God, when you, as well as the prisoners, are to be judged. We will now call our witnesses.

THE WITNESSES FOR THE DEFENSE.

Dr. Moses Carter. On 19th December I was called to Mr. Pearson's, to attend a wounded man, reported to have been robbed. Saw Major Goodridge walking the room and uttering strange speeches. He wished to go to the place of the robbery, and went. He was brought back in a fainting posture; the people in great agitation. While apparently senseless, I felt his pulse, which beat regularly. Potter afterwards came in, and they recognized each other. Soon after, I dressed his hand. He complained of severe bruises on his body and back of his head; examined him strictly, and there was no exterior mark of injury upon him, except a slight scratch on the

arm, and the wound in his hand. He was perfectly rational while I was dressing his hand; he was then put to bed. When Potter and he conversed, it was sometimes in whispers. While the dressings were going on, he told the story of the robbery. He said that he fired his pistol, and nearly knocked down one of the robbers who attacked him—said that some one rifled his bosom, and took his watch from his fob. A blow would not produce a concussion of the brain, it would produce a *compression.* Falling from an eminence might produce a *concussion.* Saw wildness in his eyes; he repeated the account of the robbery with some slight variations—such as his recollection of firing his pistol, and a person sitting on his face, and taking his watch, and rifling his bosom, on the first attack.

Dr. Israel Balch. Attended at Mr. Pearson's on the morning of the 20th, to consult with Dr. Carter. Goodridge was lying in his bed, talking incoherently. While Dr. Carter was giving me a history of the case, he was silent, watching closely. Whenever he caught my eye, he appeared confused, and looked in a different direction; which led me to suspect he was not deranged. We examined every part of his body. There were no bruises nor wounds either on the side, breast, or head. I observed to Dr. Carter that the pupil of his eye appeared enlarged; but I afterwards accounted for it by the room being a little darkened. Goodridge called for Jerry Balch. I told him I was Balch. He said I was not Jerry Balch. I afterwards, in order to satisfy myself whether this was real or not, went down stairs, took off my boots, crept up softly in my stocking feet, and peeped in at the door. I heard the bed clothes move, and saw Goodridge raise himself up upon his posteriors, and look cautiously round. He then raised his right hand and stroked back his hair; raised it again, and adjusted his earlocks; he expectorated a little, and very composedly spit in the fire, twice. A noise was then heard at the foot of the stairs, and he covered himself quick with the bed clothes, and began to talk wildly again; before this he pretended he could not move and it had required three or four to turn him; never saw him spit blood.

Dr. Richard S. Spafford. Was called to attend Major Goodridge the morning after the robbery; found him talking strangely, rendering wild answers, about robbers, to all questions; felt of his pulse, and found them rather hard; took from him some blood; examined his head; no bruise was apparent. He complained greatly of his wound, and I gave him some medicine; he became rational very soon after. That afternoon he was removed to Newburyport. The next day the same wild appearances returned; the pulse were hard; and I gave him the same medicine. He became rational again quite soon, and never afterwards discovered any appearance of delirium.

There was no mark of violence in the neck. He complained of great pains in his neck and side for a number of days. The ball entered the inside of the cuff of the surtout

for it was burnt by the powder in that side. The direction of the ball was perpendicular to the palm of the hand. Goodridge kept in the house after I told him he might go out with safety, about a week. He told me before he went out that he brushed away the pistol with his hand. Next day he appeared to recollect the conversation of the preceding night. He said to me, "You are the man who inquired about Coombs last night." Did not appear to be in his right mind.

John Jackman. Went to the ground that night, the first time with three lanterns and several persons. The first thing we came to was the whip, lying in the road, and two rods further we found the pistol, and the gap in the fence; there was some blood upon the fence. We found the pocket-book by the wall, and papers strewed about a rod round; we picked up among the papers, a knife, and a bunch of bullets were on the ground, which appeared to have been laid down with great care, not being in the least scattered. We found the hat and valise; there was some blood upon the hat. We returned to the house with the things, and Goodridge owned them. There was some blood upon the whip, but I saw none upon the pistol. We made a second search, and found a three dollar bill, and soon after his watch, close under the fence; we discovered it by means of the red seal sticking up in the with- upon the pistol. We made a sec- road some small change, and a small penknife.

Ebenezer Pearson. I tended toll that night. Major Goodridge passed just before nine. About an hour after, Miss Jackman, who was visiting at our house, went out, and suddenly returned in alarm; went to the door, and instantly Goodridge seized me, and cried out, "You are the damned robber." My father then came out, and requested me to take hold of him, till some person came to my assistance.

Major Samuel Shaw. On the nineteenth December I started from Hampton about six in the evening, and was about three hours coming to the bridge. Keyser and myself then went into Pearson's, and ate a pie. We started from there just as the bell rung nine. On the hill we heard the stage crossing the bridge, and about thirty rods ahead the stage passed us. Keyser had got forward of me before we got to town; and at the head of State street a horse came up with us, and followed me down into the stable. He had on a saddle and bridle; drove him away, in order that the owner might find him that night. After I had been abed some time, I was called up and informed of the robbery, and I told about the horse.

Ebenezer Pearson. Goodridge arrested me twice, and searched my house. The last time he came, I told him to search hell and damnation, if he pleased; and never trouble me again; and I directed my son to watch him; for I thought he might put money somewhere; money was found near my house; it was discovered by Mrs. Smith, one of the family, a few days after the second search.

Rev. James Morss. Met with

Major Goodridge in the masonic lodge; congratulated him on his discovery by means of Taber. He told me he had never seen Taber. I observed, I was much surprised, as it was generally understood that Taber had given him the information. He afterwards told me in private that he had seen Taber, and was under obligations of secrecy to him; and observed that he had seen or heard of Taber in Andover; was surprised at his prevarication, as he might easily have avoided giving any direct anwer.

Mrs. Miriam Smith. I had occasion to go into the back-house with a little child, and on my return saw a rag in the snow. I took hold of it by the corner, and the gold fell out. I was very much frightened, and screamed out "Eben, Eben." He came, and others. We stood round the place, never touching it, till deacon Dorr came.

The Counsel for the prisoners then proved the alibi of Taber at the time of the robbery by producing the record evidence of his commitment to Boston jail on the 12th of December.

James Harrison. Saw Taber the 12th of December in the prison in Boston. The next day he obtained the liberty of the yard and he called every day after at my shop till about the middle of January.

Sarah Ann Taber. My father returned from Berwick the 12th of December and was imprisoned that evening and had no time to return to his own house. Saw him every day and night till he was arrested for the robbery and taken to Newburyport.

David Lawrence. On 19th December spent the evening at Mrs. Martin's in Newburyport; was there from seven o'clock till after the bell rung for nine. Joseph Jackman was there the whole time. He went to New York in search of some property there or in Philadelphia about a week afterwards.

Mrs. Ann Martin. I know that Jackman was at my house about half past seven that evening. I went out and returned about nine, and he was there still.

Aaron Kenniston. Had about five or six dollars in the house, which I had been a long while laying by to pay my rates. They said they were tax-gatherers of the United States, and wanted my tax. I told them I could not pay it then, and they must wait. They asked me how much money I had got. I told them I had got a little in my pocket-book at home, that I had saved to pay my rates. They said I had got gold; and I told them I had not seen a piece of gold for sixteen years. I let my son have money when he went to Newburyport; I let him have a two dollar bill to help his brother with, and when he came back he gave me back one. Never knew of their having any money the whole winter. I heard my wife say, she had some hard money, but I never saw it. Never knew my sons to go where the bill was found; that's where my wife kept her things.

David Chapman. Have visited Kenniston's house and know

that the sons live as the old gentleman has stated.

Captain Durell. Know the Kennistons live as has been stated; the old gentleman has stated things as they are.

WITNESSES FOR THE COMMONWEALTH AGAIN.

Mary Howe. Know Reuben Taber; saw him last the 23rd of December. He wanted my son to do something for him. I told him my son had got a good place and had been there three weeks. Besides I did not like Mr. Taber very well.

John Page. A man by the name of McKennister said Taber was a suspicious person and I told Goodridge.

Levi French. Had a conversation with Levi Kenniston on the subject of the robbery. I pressed him to tell and he said it would be time enough when he was obliged to.

Jacob Coburn. Was at Pearson's when the search was made. As we were going up Major Goodridge said, "Let us empty our pockets that it may not be said we have deposited money there."

April 24.

The Prisoner's counsel moved that Reuben Taber who was indicted jointly with the defendants should be put to the bar and tried so that if nothing appeared against him he might be acquitted and the prisoners be entitled to the benefit of his testimony.

Taber was then arraigned and pleaded NOT GUILTY. The Solicitor General entered a nolle prosequi to the indictment against him and he was accordingly discharged.

Reuben Taber. Was committed to jail on an execution in favor of Leach and Morrison last December. Did not go out of Boston till I was arrested and carried to Newburyport. First saw Major Goodridge in Newburyport at the time I was arrested and never till then. Never had any conversation with him or made any disclosures to him on the prisoners at the bar. I never in my life saw them till this moment except from my window this morning as they passed from the jail.

Thomas Pearson. Was present when the major came with his magicians to search. My father desired me to watch Major Goodridge, saying it was as easy for folks to *put* money in places as to *find* it. I did, and kept close to him. As it was very cold, they all went into the bar room. While they were there, a traveller came and wanted his horse baited. I thought, as they were all in, I might seize a moment, to go and wait upon him. As I was coming out of the barn, I saw Major Goodridge coming out of the necessary, and coming round the backside of the house. He passed over the route where the money was found. He could have dropped the money without my seeing him.

Deacon Edward Dorr. On 22d February was requested

to go to the bridge by Ebenezer Pearson, Jr. I accompanied him and took up in my way 'squire Nye. I went to the back side of the house and found a collection of people standing around the money and wondering at it. In the snow I could see the edges of the doubloons. I poured boiling water all around and found six pieces. The women said: "Do not leave it till somebody comes from Newburyport." Mr. Knapp soon after came. I found it had sunk three inches through the new snow which was frozen. The old snow was three inches from the ground.

Jacob Coburn.

Mr. Webster. When did you find the papers in the necessary vault at Pearson's? In the second search, the same day the search was made with the witch-hazel and metallic rods. Two of them much defaced with filth and the others on the ice in the vault; some of them had frost on them—frozen down.

Major Goodridge.

Mr. Webster. Look at Taber—is he the man you saw and conversed with and who made the disclosures to you at Boston? I think he is; I am not positive.

Taber then said, looking Goodridge steadily in the face, "A man who ever saw me once, would not forget me."

Mr. Webster. Major Goodridge, did the person, with whom you conversed in Boston, answer to the name of Taber, and converse with you as Taber? He did.

William Jones. The latter part of January I went to Maj. Goodridge to a place he appointed to meet Taber; another gentleman found the clothes with which Goodridge disguised himself. We went to the market, where Goodridge left us, and did not return under three quarters of an hour; think Taber was the man I saw with Goodridge. I think he was, according to the best of my judgment.

Major Goodridge.

Mr. Knapp. Did you derive your first information of the Kennistons from this man? I did not. Caldwell informed me of his suspicion of them; but said they had not pluck enough to do it.

The Solicitor General moved for leave to introduce testimony to Major Goodridge's good character. It was objected to by the prisoner's counsel, upon the ground that it was not within the rule; and that they had not attempted to discredit him.

JUDGE PUTNAM. I consider Major Goodridge as much upon his trial for perjury, as the prisoners for robbery.

Mr. Webster. I have no objection, if your honor will render the same judgment.

Rev. Mr. Cochran. Reside at Cambridge now. Major Goodridge was born near my native place; knew him till he was 18 years old; had always felt an interest for Major Goodridge as there had been an intimacy between our families. His general character stands as fair as any—never knew one more fair; have often made inquiries about him; he formerly kept school.

Zadock French. Live in Boston; have known him about six years. He hires a store in Bangor of me. Have had constant commercial intercourse with him; his character is remarkably correct and good; this have heard at Bangor and from his acquaintance.

John Parker, of Bangor. Major Goodridge went there in 1812; our stores are near together; his character is fair and never heard anything against him in my life.

Mr. Garland of Bangor. Mr. Goodridge has resided in my family; his character is very fair; he is a man of credit and business there.

Stephen Kimball. Live at Bangor; his character is very fair; is in good credit and business.

Dr. George Osgood of Danvers. First knew Mr. Goodridge in 1806 in Danvers. We boarded together in the same family about six months; afterward lived near him two years—his character was as good as any man's I have known.

Wm. Gale. Was at Newbury, Dec. 19th, in the evening, going eastward — passed the bridge about 8 o'clock, going to Amesbury; just by the hay-scales met 3 men, loitering, not at all in a hurry; two short, and one tall man—the tall one spoke—he seemed to be a kind of a blackguarding character—couldn't understand what he said—'twas about 8 o'clock when I saw them—next morning he spoke of it—have never been called to testify before.

Miss Taber. Father wore a very *dark* surtout last winter—he has not had a *light* one for three years.

James Harrison. Never saw Taber wear a *light* or *any* surtout.

Stephen Howard. The morning after the robbery, in the room at Pearson's, saw the glove and pistol, and examined them —the pistol was a large horse pistol, about a nine inch barrel; the lock of the pistol was bloody; the pan was not dirty, nor the muzzle, as if they had been fired recently; put my finger into the barrel: it was not soiled; asked for a white rag; then rammed down a piece of India Cotton in the barrel; it had no soil on it, there was only a little dry dust at the bottom; a little pulverized powder—then gave my opinion, and now think the pistol could not have been fired the night before.

MR. WEBSTER FOR THE PRISONERS.

Gentlemen: It was true that the offense charged was not capital but perhaps this could hardly be considered as favorable to the defendants. To those who are guilty and without hope of escape, no doubt the lightness of the penalty of transgression gives consolation. But if the defendants were innocent it was more natural for them to be thinking upon what they had lost by that alteration of the law which left highway

robbery no longer capital, than upon what the guilty might gain by it. They had lost those great privileges, in their trial, which the law allows, in capital cases, for the protection of innocence against unfounded accusation. They have lost the right of being previously furnished with a copy of the indictment, and a list of the government witnesses. They have lost the right of peremptory challenge, and notwithstanding the prejudices which they know have been excited against them, they must show legal cause of challenge, in each individual call, or else take the jury as they find it. They have lost the benefit of the assignment of counsel by the court. They have lost the benefit of the Commonwealth's process to bring in witnesses in their behalf. When to these circumstances, it was added that they were strangers, in a great degree without friends, and without the means for preparing their defense, it was evident they must take their trial under great disadvantages.

Mr. Webster then called the attention of the jury to those circumstances, which he thought could not but cast doubts on the story of the prosecutor.

In the first place, it was impossible to believe a robbery of this sort to have been committed by three or four men, without previous arrangement and concert, and of course without the knowledge of the fact that Goodridge would be there, and that he had money. They did not go on the highway, in such a place, in a cold December's night for the general purpose of attacking the first passenger, running the chance of his being somebody who had money. It was not easy to believe that a gang of robbers existed, that they acted systematically, communicating intelligence to one another, and meeting and dispersing as occasion required, and that this gang had their head-quarters in such a place as Newburyport; no town is more distinguished for the correctness of the general habits of its citizens, and it is of such a size that every man in it may be known to all the rest. The pursuits, occupations and habits of every person within it are within the observation of his neighbors. A suspicious stranger

would be instantly observed, and all his movements could be easily traced. This is not the place to be the general rendezvous of a gang of robbers. Offenders of this sort hang on the skirts of great cities. From the commission of their crimes they hasten into the crowd, and hide themselves in the populousness of great cities. If it were wholly improbable that a gang existed in such a place for the purpose of general plunder, the next inquiry was, was there any reason to think that there had been a special or particular combination, for the single purpose of robbing the prosecutor? Now it was material to observe, that not only was there no evidence of any such combination, but also that circumstances did exist which rendered it next to impossible that the defendants could have been parties to such a combination or even that they could have any knowledge of the existence of any such man as Goodridge, or that any person, with money, was expected to come from the Eastward and to be near Essex Bridge, at or about 9 o'clock that evening.

One of the defendants had been for some weeks in Newburyport—the other passed the bridge from New Hampshire, at 12 o'clock, on the 19th. At this time Goodridge had not yet arrived at Exeter, twelve or fourteen miles from the bridge. How then could either of the defendants know that he was coming? Besides, he says that nobody knew, on the road, that he had money, as far as he knows, and nothing happened till he reached Exeter, according to his account, from which it might be conjectured that he carried money. Here, as he relates it, it became known that he had pistols, and he must wish you to infer, that the plan to rob him was laid here, at Exeter, by some of the persons who inferred that he had money from his being armed. Who were these persons? Certainly not the defendants, or either of them. Certainly not Taber. Certainly not Jackman. Were they persons of suspicious character? Was he in a house of a suspicious character? On this point he gives us no information. He has either not taken the pains to inquire, or he chooses not to communicate the result of his inquiries. Yet nothing

could be more important, since he seems compelled to lay the scene of the plot against him at Exeter, than to know, who the persons were that he saw, or that saw him at that place. On the face of the facts now proved, nothing could be more improbable than that the plan of robbery was concerted at Exeter. If so, why should those who concerted send forward to Newburyport to engage the defendants, especially as they did not know that they were there? What should induce any persons so suddenly to apply to the defendants to assist in a robbery? There was nothing in their personal character or previous history that should induce this.

Nor was there time for all this. If the prosecutor had not lingered on the road, for reasons not yet discovered, he must have been in Newburyport long before the time at which he states the robbery to have been committed. How, then, could any one expect to leave Exeter, come to Newburyport, fifteen miles, there look out for and find assistants for a highway robbery, and get back two miles to a convenient place for the commission of the crime? That any body should have undertaken to act thus was wholly improbable, and in point of fact there is not the least proof of any body's travelling that afternoon, from Exeter to Newburyport, or of any person who was at the tavern at Exeter, having left it that afternoon. In all probability, nothing of this sort could have taken place, without being capable of detection and proof. In every particular the prosecutor has wholly failed to show the least probability of a plan to rob him having been laid at Exeter.

But how comes it, that Goodridge was near or quite four hours and a half in travelling a distance which might have been travelled in two hours or two hours and a half? He says he missed his way, and went the Salisbury road. But some of the jury know that this could not have delayed him more than five or ten minutes. It would be well to be able to give some better account of this delay.

Failing, as he seems to do, to create any belief that a plan

to rob him was fixed at Exeter, the prosecutor goes back to Alfred, and says he saw there a man whom Taber resembles. But Taber is proved to have been at that time, and at the time of the robbery, in Boston. This is proved beyond question. It is so certain, that the Solicitor has *non prossed* the indictment against him.

There is an end, then, of all pretence of the adoption of a scheme of robbery at Alfred: this leaves the prosecutor altogether unable to point out any manner in which it should become known that he had money, or in which a design to rob him should originate.

It was next to be considered whether the prosecutor's story was either natural or consisitent. But, in the threshold of the inquiry every one puts the question, what motive had the prosecutor to be guilty of the abominable conduct of feigning a robbery? It is difficult to assign motives. The jury did not know enough of his character or circumstances. Such things had happened, and might happen again. Suppose he owed money in Boston, and had it not to pay? Who knows how high he might estimate the value of a plausible apology? Some men have also a whimsical ambition of distinction. There is no end to the variety of modes in which human vanity exhibits itself. A story of this nature excites the public sympathy. It attracts general attention. It causes the name of the prosecutor to be celebrated as a man who has been attacked, and after a manly resistance, overcome by robbers, and who has renewed his resistance, as soon as returning life and sensation enabled him, and after a second conflict has been quite subdued, beaten and bruised out of all sense and sensation, and finally left for dead on the field. It is not easy to say how far such motives, trifling and ridiculous as most men would think them, might influence the prosecutor, when connected with any expectation of favor or indulgence, if he wanted such from his creditors. It was to be remembered, that he probably did not see all the consequences of his conduct, if his robbery be a pretence. He might not intend to prosecute any body. But he probably

found, and indeed there is evidence to show, that it was necessary for him to do something to find out the authors of the alleged robbery. He manifested no particular zeal on this subject. He was in no haste. He appears rather to have been pressed by others to do that which we should suppose he would be most earnest to do, the earliest moment.

But could he so seriously wound himself—could he or would he shoot a pistol bullet through his hand, in order to render the robbery probable, and to obtain belief in his story? All exhibitions are subject to accidents. Whether they are serious are farcical, they may, in some particulars, not proceed exactly as they are designed to do. If we knew that this shot through the hand, if made by himself, must have been intentionally made by himself, it would be a circumstance of greater weight. The bullet went through the sleeve of his coat. He might intend it should have gone through nothing else. It was quite certain he did not receive this wound in the way he described. He says he was pulling or thrusting aside the robber's pistol, and while his hand was on it, it was fired and the contents passed through his hand. This could not have been so, because no part of the contents went through the hand, except the ball. There was powder on the sleeve of his coat, and from the appearance one would think the pistol to have been three or four feet from the hand when fired. The fact of the pistol bullet being fired through the hand is doubtless a circumstance of weight. It may not be easy to account for it; but it is to be weighed with other circumstances.

It was most extraordinary, that in the whole case the prosecutor should prove hardly any fact, in any way but by his own oath. He chooses to trust everything on his own credit with the jury. Had he the money with him, which he mentions? If so, his clerks or persons connnected with him in business must have known it; yet no witness is produced. Nothing can be more important than to prove that he had the money. Yet he does not prove it. Why should he leave this essential fact without further support? He is not surprised with this

defense—he knew what it would be. He knew that nothing could be more important than to prove that in truth he did possess the money which he says he lost; yet he does not prove it. All that he saw, and all that he did, and every thing that occurred to him until after the alleged robbery, rests solely on his own credit. He does not see fit to corrborate any fact by the testimony of any witness. So he went to New York to arrest Jackman. He did arrest him. He swears positively that he found in his possession papers which he lost at the time of the robbery; yet he neither produces the papers themselves, nor the persons who assisted in the search.

In like manner he represents his intercourse with Taber at Boston. Taber he says made certain confessions. They made a bargain for a disclosure or confession on one side, and a reward on the other. But no one heard these confessions except Goodridge himself. Taber now confronts him, and pronounces this part of his story to be wholly false, and there is nobody who can support the prosecutor.

A jury cannot too seriously reflect on this part of the case. There are many most important allegations of fact, which, if true, could easily be shown by other witnesses and yet are not shown.

How came Mr. Goodridge to set out from Bangor, armed in this formal and formidable manner? How came he to be so apprehensive of a robbery? The reason he gives is completely ridiculous. As the foundation of his alarm, he tells a story of a robbery which he had heard of, but which, as far as appears, no one else ever heard of, and the story itself is so perfectly absurd, it is difficult to resist the belief that it was the product of his imagination at the moment. He seems to have been a little too confident that an attempt would be made to rob him. The manner in which he carried his money, as he says, indicated a strong expectation of this sort. His gold he wrapped in a cambric cloth, put it into a shot bag, and then into his portmanteau. One parcel of bills, of a hundred dollars in amount, he put into his pocket book—an-

other of somewhat more than a thousand dollars, he carried next his person, underneath all his clothes. Having disposed of his money, in this way, and armed himself with two good pistols, he set out from Bangor. The jury would judge whether this extraordinary care of his money, and this formal arming of himself to defend it, did not appear a good deal suspicious.

He stated that he did not travel in the night. That he would not so much expose himself to robbers. He said that when he came near Alfred, he did not go into the village, but stopped a few miles short, because night was coming on, and he would not trust himself and his money out at night. He represents himself to have observed this rule constantly and invariably until he got to Exeter. Yet, when the time came for the robbery, he was found out at night. He left Exeter about sunset intending to go to Newburyport, fifteen miles distant that evening. When he is asked how this should happen, he says he had no fear of robbers after he left the District of Maine. He thought himself quite safe, when he arrived at Exeter. Yet he told the jury, that at Exeter he thought it necessary to load his pistol afresh. He asked for a private room at the inn. He told the persons in attendance that he wished such a room for the purpose of changing his clothes. He charged them not to suffer him to be interrupted. But he says his object was not to change his dress, but to put new loading into his pistol. What sort of a story was this?

He says he now felt himself out of all danger from robbers, and was therefore willing to travel at night. At the same time he thought himself in very great danger from robbers, and therefore took the utmost pains to keep his pistols well loaded and in good order. To account for the pains he took about loading his pistols at Exeter, he says it was his invariable practice, every day after he left Bangor, to discharge and load again one or both of his pitsols; that he never missed doing this; that he avoided doing it at the inns, lest he should create suspicion, but that he did it, while alone, on the road every day.

How far this was probable the jury would judge. It would be observed that he gave up his habits of caution, as he approached the place of the robbery. He then loaded his pistols at the tavern, where persons might and did see him, and he then also travelled in the night. He passed the bridge over Merrimack river a few minutes before nine o'clock. He was now at a part of his progress where he was within observation of other witnesses, and something could be known of him besides what he told of himself. Immediately after him passed the two persons with their wagons, Shaw and Keyser. Close upon them followed the mail stage. Now these wagons and the stage must have passed within three rods, at most, of Goodridge, at the very time of the robbery. They must have been very near the spot, the very moment of the attack, and if he was under the robbers' hands as long as he represents, or if they staid on the spot long enough to do half what he says they did do, they must have been there when the wagons and the stage passed. At any rate, it is next to impossible, by any computation of time, to put these carriages so far from the spot as that the drivers should not have heard the cry of murder which he says he raised, or the report of the two pistols which he says were discharged. In three-quarters of an hour, or an hour, he returned, and re-passed the bridge.

The jury would next naturally look to the appearances exhibited on the field, after the robbery. The portmanteau was there. The witnesses say that the straps which fastened it to the saddle had been neither cut nor broken. They were carefully unbuckled. This was very considerate, for robbers. It had been opened, and its contents were scattered about the field. The pocket book, too, had been opened, and many papers it contained found on the ground. Nothing valuable was lost but money. The robbers did not think it well to go off at once, with the pormanteau and the pocket book. The place was so secure, so remote, so unfrequented, they were so far from the highway—at least one full rod—there were so few persons passing, probably not more than four or five then in the road, within hearing of the pistols and the cries

of Goodridge; there being too not above five or six dwelling houses, full of people, within the hearing of the report of a pistol. These circumstances were all so favorable to their safety, that the robbers sat down to look over the prosecutor's papers, carefully examined the contents of his pocket book and pormanteau, and took only the things which they needed! There was money belonging to other persons. The robbers did not take it. They found out it was not the prosecutor's and left it. It may be said to be favorable to the prosecutor's story, that the money which did not belong to him, and the plunder of which would seem to be the most probable inducement he could have to feign a robbery, was not taken. But the jury would consider whether this circumstance did not bear quite as strong the other way, and whether they can believe that robbers could have left this money either from accident or design.

The robbers, by Goodridge's account, were extremely careful to search his person. Having found money in his portmanteau and in his pocket book, they still forthwith stripped him to the skin, and searched until they found the sum which had been so carefully deposited under his clothes. Was it likely, that having found money in the places where it is ordinarily carried, robbers should proceed to search for more, where they had no reason to suppose more would be found? Goodridge says that no person knew of his having put his bills in that situation. On the first attack, however, they proceeded to open one garment after another until they penetrated to the treasure, which was beneath them all.

The testimony of Mr. Howard was material. He examined Goodridge's pistol which was found on the spot, and thinks it had not been fired at all. If this be so, it would follow that the wound through the hand was not made by this pistol; but, then, as the pistol was then discharged, if it had not been fired, he is not correct in swearing that he fired it at the robbers, nor could it have been loaded at Exeter, as he testified.

In the whole case, there was nothing perhaps more deserv-

ing consideration, than the prosecutor's statement of the violence which the robbers used towards him. He says he was struck with a heavy club, on the back part of his head. He fell senseless to the ground. Three or four rough-handed ruffians then dragged him to the fence, and through it or over it, with such force as to break one of the boards. They then plundered his money. Presently he came to his senses; perceived his situation; saw one of the robbers sitting or standing near; he valiantly sprung upon, and would have overcome him, but the ruffian called out for his comrades, who returned and all together they renewed their attack upon, subdued him, and redoubled their violence. They struck him heavy blows; they threw him violently to the ground; they kicked him in the side; they chocked him; one of them, to use his own words, jumped upon his breast. They left him only when they supposed they had killed him. He went back to Pearson's, at the bridge, in a state of delirium, and it was several hours before his recollection came to him. This is his account. Now, in point of fact it was certain, that on no part of his person was there the least mark of this beating and wounding. The blow on the head, which brought him senseless to the ground, neither broke the skin, nor caused any tumor, nor left any mark whatever. He fell from his horse on the frozen ground, without any appearance of injury. He was drawn through or over the fence with such force as to break the rail, but not at all to leave any wound or scratch on him. A second time he is knocked down, kicked, stamped upon, choked, and in every way abused and beaten till sense had departed, and the breath of life hardly remained, and yet no wound, bruise, discoloration, or mark of injury was found to result from all this. Except the wound in his hand, and a few slight punctures in his left arm, apparently made with his own penknife, which was found open on the spot, there was no wound or mark which the surgeons, upon repeated examinations could any where discover. This was a story not to be believed. No matter who tells it, it is so impossible to be true, that all belief is set at defiance. No man can be-

lieve it. All this tale of blows which left no marks, and of wounds which could not be discovered, must be the work of imagination. If the jury could believe that he was robbed, it was impossible they should or could believe his account of the manner of it.

With respect, next, to delirium. The jury had heard the physicians. Two of them had no doubt it was all feigned. Dr. Spofford had spoken in a more qualified manner, but it was very evident his opinion agreed with theirs. In the height of his raving, the physician who was present said to others, that he could find nothing the matter of the man, and that his pulse was perfectly regular. But consider the facts which Dr. Balch testifies. He suspected the whole of this illness and delirium to be feigned. He wished to ascertain the truth. While he or others was present, Goodridge appeared to be in the greatest pains and agony from his wounds. He could not turn himself in bed, nor be turned by others without infinite distress. His mind too was as much disordered as his body. He was constantly raving about robbery and murder. At length the physicians and others withdrew, and left him alone in the room. Dr. Balch returned softly to the door, which he had left partly open, and there he had a full view of his patient, unobserved by him. Goodridge was then very quiet. His incoherent exclamations had ceased. Dr. Balch saw him turn over in bed, without inconvenience. Pretty soon he sat up in bed, and adjusted his neckcloth and his hair. Then, hearing footsteps on the stair case, he instantly sunk into the bed again; his pains all returned, and he cried out against robbers and murderers as loud as ever. Now these facts are all sworn to by an intelligent witness, who cannot be mistaken in them, a respectable physician whose veracity or accuracy is in no way impeached or questioned. After this, it was difficult to retain any good opinion of the prosecutor. Robbed or not robbed, this was his conduct, and such conduct necessarily takes away all claim to sympathy and respect. The jury would consider whether it did not also take away all right to

be believed in any thing. For if they should be of opinion that in any one point he had intentionally misrepresented facts, he could be believed in nothing. No man was to be convicted on the testimony of a witness whom the jury had found wilfully violating the truth in any particular.

The next part of the case was, the conduct of the prosecutor, in attempting to find out the robbers, after he had recovered from his illness. He suspected Mr. Pearson, a very honest, respectable man, who keeps the tavern at the bridge. He searched his house and premises. He sent for a conjurer to come, with his metallic rods and witch hazel, to find the stolen money. Goodridge says now that he thought he should find it, if the conjurer's instruments were properly prepared. He professes to have full faith in the art. Was this folly, or fraud, or a strange mixture of both? Pretty soon after the last search, gold pieces were actually found near Mr. Pearson's house, in the manner stated by the female witness. How came they there? Did the robber deposit them there? That is not possible. Did he accidentally leave them there? Why should not a robber take as good care of his money as others? It is certain, too, that the gold pieces were not put there at the time of the robbery, because the ground was then bare, but when these pieces were found there were several inches of snow below them. When Goodridge searched here with his conjuror, he was on this spot, alone and unobserved as he thought. Whether he did not, at that time, drop his gold into the snow, the jury will judge. When he came to this search, he proposed something very ridiculous. He proposed that all persons about to assist in the search should be examined, to see that they had nothing which they could put into Pearson's possession, for the purpose of being found there. But how was this examination to be made? Why, truly, Goodridge proposed that every man should examine himself, and that, among others, he would examine himself, till he was satisfied he had nothing in his pockets which he could leave at Pearson's, with the fraudulent design of being afterwards found there, as evidence against Pearson. What construction would be given to such conduct?

As to Jackman, Goodridge went to New York and arrested him. In his room he says he found paper coverings of gold, with his own figures on them, and pieces of an old and useless receipt, which he can identify, and which he had in his possession at the time of the robbery. He found these things lying on the floor in Jackman's room. What should induce the robbers, when they left all other papers, to take this receipt, and what should induce Jackman to carry it to New York, and keep it, with the coverings of the gold, in a situation where it was likely to be found, and used as evidence against him?

There was no end to the series of improbabilities growing out of the prosecutor's story.

One thing especially deserves notice. Wherever Goodridge searches, he always finds something; and what he finds he can identify and swear to as being his. The thing found has always some marks by which he knows it. Yet he never finds much. He never finds the mass of his lost treasure. He finds just enough to be evidence, and no more.

These were the circumstances, which tended to raise doubts of the truth of the prosecutor's relation. It was for the jury to say, whether it would be safe to convict any man for this robbery, until their doubts should be cleared up. No doubt they were to judge him candidly, but they were not to make every thing yield to a regard to his reputation, or a desire to vindicate him from the suspicion of a fraudulent prosecution.

He stood like other witnesses, except that he was a very interested witness, and he must hope for credit, if at all, from the consistency and general probability of the facts to which he testified. The jury would not convict the prisoners to save the prosecutor from disgrace. He had had every opportunity of making out his case. If any person in the state could have corroborated any part of his story, that person he could have produced. He had had the benefit of full time, and good counsel, and of the Commonwealth's process to bring in his witnesses. More than all, he had an opportunity of telling his own story, with the simplicity that be-

longs to truth, if it were true, and the frankness and earnestness of an honest man, if he be such. It was for the jury to say, under their oaths, how he had acquitted himself in these particulars, and whether he had left their minds free of doubt about the truth of his narration.

But if Goodridge were really robbed, was there satisfactory evidence that the defendants had a hand in the commission of this offense? The evidence relied on is the finding of the money in their house. It appeared that these defendants lived together, and, with a sister, constituted one family. Their father lived in another part of the same house, and with his wife constituted another and distinct family. In this house, some six weeks after the robbery, the prosecutor made a search, and the result has been stated by the witnesses. Now, if the money had been passed, or used by the defendants, it might have been conclusive. If found about their persons, it might have been very strong proof. But, under the circumstances of this case, the mere finding of money in their house, and that only in places where the prosecutor had previously been, was no evidence at all. With respect to the gold pieces, it was certainly true, that they were found in Goodridge's track. They were found only where he had been and might have put them.

When the sheriff was in the house, and Goodridge in the cellar, gold was found in the cellar. When the sheriff was up stairs, and Goodridge in the rooms below, the sheriff was called down to look for money where Goodridge directed and there money was found. As to the bill, the evidence is not quite so clear. Mr. Leavitt says he found a bill in a drawer, in a room in which none of the party had before been. That he thought it an uncurrent or counterfeit bill, and not a part of Goodridge's money, and left it where he found it, without further notice. An hour or two afterward, Upton perceived a bill in the same drawer, Goodridge being then with or near him, and called to Leavitt. Leavitt told him that he had discovered that bill before, but that it could not be Goodridge's. The bill was then examined. Leavitt says he looked

at it and saw writing on the back of it. Upton says he looked at it, and saw writing on the back of it. He says also that it was shown to Goodridge, who examined it in the same way that he and Leavitt examined it. None of the party at this time suspected it to be Goodridge's. It was then put into Leavitt's pocket book, where it remained till evening, when it was taken out at the tavern, and then it turned out to be, plainly and clearly, one of Goodridge's bills, and had the name "James Poor, Bangor," in Goodridge's own handwriting on the back of it. The first thing that strikes one, in this account, is, why was not this discovery made at the time? Goodridge was looking for bills, as well as gold. He was looking for Boston bills—for such he had lost. He was looking for ten dollar bills, for such he had lost. He was looking for bills which he could recognize and identify. He would therefore naturally be particularly attentive to any writing or marks upon such as he might find. Under these circumstances, a bill is found in the house of the supposed robbers. It is a Boston bill—it is a ten dollar bill—it has writing on the back of it—that writing is the name of his town, and the name of one of his neighbors—more than all, that writing is his own hand writing!—notwithstanding all this, neither Goodridge, nor Upton, or the sheriff examined the bill, so as to see whether it was Goodridge's money. Notwithstanding it so fully resembled, in all points, the money they were looking for, and notwithstanding they also saw writing on the back of it, which they must know, if they read it, would probably have shown where the bill came from, yet neither of them did so far examine it as to see any proof of its being Goodridge's. This was hardly to be believed. It must be a pretty strong faith in the prosecutor that could credit this story. In every part of it, it was improbable and absurd. It was much more easy to believe that the bill was changed. There might have been, and there probably was, an uncurrent or counterfeit bill, found in the drawer by Leavitt. He certainly did not at the time think it to be Goodridge's, and he left it in the drawer where he found it. Before he

saw it again, the prosecutor had been in that room, and was in or near it, when the sheriff was again called in, and asked to put that bill in his pocket book. How did the jury know that this was the same bill which Leavitt had before seen? Or, suppose it was, Leavitt carried it to Coffin's, in the evening he produced it, and after having been handed about for sometime among the company, it turned out to be Goodridge's bill, and to have upon it infallible marks of indentity. How did the jury know that a sleight of hand had not changed the bill at Coffin's? It is sufficient to say, the bill might have been changed. It is not certain that this is the bill which Leavitt first found in the drawer—and this not being certain, it is not proof against the defendants.

Was it not extremely improbable, if the defendants were guilty, that they should deposit the money in the places where it was found? Why should they put it in small parcels in so many places, for no end but to multiply the chances of detection? Why, especially, should they put a doubloon in their father's pocket-book? There is no evidence, nor any ground of suspicion, that the father knew of the money being in his pocket-book. He swears he did not know it. His general character is unimpeached, and there is nothing against his credit. The inquiry at Stratham was calculated to elicit the truth, and, after all, there is not the slightest reason to suspect that he knew that the doubloon was in his pocket-book. What could possibly induce the defendants to place it there? No man can conjecture a reason. On the other hand —if this were fraudulent proceeding on the part of the prosecutor, this circumstance could be explained. He did not know that the pocket-book, and the garment in which it was found, did not belong to one of the defendants. He was as likely therefore, to place it there as elsewhere. It was very material to consider that nothing was found in that part of the house, which belonged to the defendants. Everything was discovered in the father's apartments. They were not found, therefore, in the possession of the defendants, any more than if they had been discovered in any other house in the neigh-

borhood. The two tenements, it was true, were under the same roof. But they were not on that account the same tenements, they were as distinct as any other houses. Now, how should it happen that the several parcels of money should all be found in the father's possession? He is not suspected—certainly there is no reason to suspect him—of having had any hand either in the commission of the robbery, or the concealing of the goods. He swears he had no knowledge of any part of this money being in his house. It is not easy to imagine how it came there, unless it be supposed to be put there by some one who did not know what part of the house belonged to the defendants, and what did not.

The witnesses on the part of the prosecution have testified, that the defendants when arrested manifested great agitation and alarm; paleness overspread their faces, and drops of sweat stood on their temples. This satisfied the witnesses of the defendants' guilt, and they now state the circumstance as being indubitable proof. This argument manifests, in those who use it, equal want of sense and sensibility. It is precisely fitted to the feeling and intellect of a bum-bailiff. In a court of justice, it deserves nothing but contempt. Is there nothing that can agitate the frame or excite the blood, but the consciousness of guilt? If the defendants were innocent, would they not feel indignation at this unjust accusation? If they saw an attempt to produce false evidence against them, would they not be angry? And seeing the production of such evidence, might they not feel fear and alarm? And have indignation, and anger, and terror, no power to affect the human countenance, or the human frame?

Miserable, miserable, indeed, is the reasoning which would infer any man's guilt from his agitation, when he found himself accused of a heinous offense; when he saw evidence, which he might know to be false and fraudulent brought against him; when his house was filled, from the garret to the cellar, by those whom he might esteem as false witnesses; and when he himself, instead of being at liberty to observe their conduct and watch their motions, was a prisoner in close

custody in his own house, with the fists of a catch-poll clenched upon his throat.

The defendants were at Newburyport the afternoon and evening of the robbery. For the greater part of the time, they show where they were and what they were doing. Their proof, it is true, does not apply to every moment. But, when it is considered that, from the moment of their arrest, they have been in close prison, perhaps they have shown as much as could be expected. Few men, when called on afterwards, can remember, and fewer, still, can prove how they have passed every half hour of an evening. At a reasonable hour they both came to the house where Laban had lodged the night before. Nothing suspicious was observed in their manners or conversation. Is it probable they would thus come unconcernedly into the company of others from a field of robbery, and, as they must have supposed, of murder, before they could have ascertained whether the stain of blood was not on their garments? They remained in the place a part of the next day. The town was alarmed; a strict inquiry was made of all strangers, and of the defendants among others. Nothing suspicious was discovered. They avoided no inquiry, nor left the town in any haste. The jury had had an opportunity of seeing the defendants. Did their general appearance indicate that hardihood which would enable them to act this cool, unconcerned part? Was it not more likely they would have fled?

From the time of the robbery to the arrest, five or six weeks, the defendants had been engaged in their usual occupations. They are not found to have passed a dollar of money to any body. They continued their ordinary habits of labor. No man saw money about them, nor any circumstance that might lead to a suspicion that they had money. Nothing occurred tending in any degree to excite suspicions against them. When arrested, and when all this array of evidence was made against them, and when they could hope in nothing but their innocence, immunity was offered them again if they would confess. They were pressed, and urged, and

allured by every motive which could be set before them, to acknowledge their participation in the offense, and to bring out their accomplices. They steadily protested that they could confess nothing, because they knew nothing. In defiance of all the discoveries made in their house, they have trusted to their innocence. On that, and on the candour and discernment of an enlightened jury, they still relied.

If the jury were satisfied that there was the highest improbability that these persons could have had any previous knowledge of Goodridge, or been concerned in any previous concert to rob him; if their conduct that evening and the next day was marked by no circumstances of suspicion; if, from that moment until their arrest, nothing appeared against them; if they neither passed money, nor are found to have had money; if the manner of the search of their house, and the circumstances attending it, excite strong suspicions of unfair and fraudulent practices; if, in the hour of their utmost peril, no promises of safety could draw from the defendants any confessions affecting themselves or others, it would be for the jury to say whether they could pronounce them guilty.

THE SOLICITOR GENERAL TO THE JURY.

Mr. Davis. Gentlemen of the Jury: After the learned, able, and eloquent argument, which has been addressed to you in behalf of the prisoners, you will readily apprehend the weight of responsibility which rests upon me. But, independent of considerations of this nature, the importance of this trial to the Commonwealth and Major Goodridge, as well as to the prisoners, demands our most earnest attention. I have no ambition to raise what little of reputation I may possess by any attempt at a display of ingenuity and eloquence; but I am well aware of the effects which they produce, and have witnessed them, as well upon other occasions as upon this present trial. But I shall confine myself wholly to remarks upon the evidence, and direct your attention to its appropriate application. There are two points which it

is my duty to make out to your satisfaction:—First, that a robbery was committed: Secondly, that the defendants were concerned in it.

With respect to the first position, the defendants' counsel seem to have taken it for granted that Major Goodridge has been guilty of the most atrocious crime; that he has begun his career with the foulest deceptions, and that he has attempted to support them by the foulest practices; and has done it by practising against the peace, the happiness, and the liberty of the defendants. I admit that his feelings and reputation are deeply interested in the result of this prosecution; but this is no uncommon case; for in the discharge of my official duties, it has often fallen to my lot to defend the character of the witnesses introduced by the government. A principal part of a defense often consists in arraigning the character of the witnesses; and in the present instance, the black, the soul-destroying crime of perjury is imputed to Major Goodridge. It is impossible that he should be guilty of the enormities charged upon him. It exceeds all belief of human depravity: for if what has been ascribed to him is true, he must be a monster in human shape; and more corrupt and perfidious than the Prince of Darkness. Great God! is it possible that such a man exists, and that the sun shines upon him? It is not possible that any man should be so base, much less a person in the standing of Major Goodridge. No man in the Commonwealth can come into court with a fairer character: Is it then to be believed that he would suddenly change his course of conduct, abandon his good principles, and become the greatest wretch in the universe?

There are two ordinary modes of disqualifying and discrediting a witness; one is, to show that he has been convicted of an infamous crime. The other is, to show that his character for truth is so bad, that he is wholly unworthy of belief. But when his testimony is inconsistent, it is proper for me to admit, that it is a fair subject of attack.

Gentlemen, if the evidence which you have heard from the

witnesses is to be credited, there is sufficient to authorize you to convict; and with respect to the accusation of the defendants, I will remark to you, that Major Goodridge felt no malice towards them. He would as soon have gone to the house of any other persons in New Hampshire, if he had had the same information as that upon which he proceeded in the present instance. He had had information that Caldwell, that Titcomb, that others suspected them; and, finally, he says Taber made to him the important communication, that they were concerned in the robbery, and had possession of his property. With these strong circumstances in his favor, he comes into your presence and certifies that he was robbed; and in the first instance it should be pressed upon your observation, that it appears from his testimony, that the property of which he was robbed, was his own; if it had been otherwise the prisoners' counsel would have shown that his statement in this particular was false.

It has been suggested, that no evidence has been brought from New York, by Goodridge, to support the story he tells, respecting the finding of the pieces of his papers in Jackman's room, and that he has not produced these papers; he could no more bring a witness from New York than he could bring the city hall. In the one case there is a legal, in the other a physical impossibility; and the papers were taken by the police and sealed up. That is the practice there, and so it is here. Another circumstance is urged, that he has given no clear account how he came by this money. The law does not require it of him; reason does not require it. He tells you a probable story about the gold, that he obtained it at different times in the course of his trade, and he was so situated, that it is extremely probable, that, in the ordinary transaction of business, he should collect a quantity of gold. The British had but lately had possession of a part of that country, and the gold with which they pay their troops had circulated; he had probably trafficked too with the Indians, who dispose of their furs for gold in Canada, and in some country towns the banks are not in credit. These things therefore account for the gold in his possession.

I do not know whether he has a clerk or not; but even if he has, it is not necessary that he should know the amount of his employer's money, or all the means by which it was collected.

Gentlemen, it is said the property was not all his own; true, it was not. But all that of which he was robbed, was his own, while that which belonged to others was saved. What could have been his motive? Interest it must have been if anything, in order to embezzle the money of others. But it happens that the money of others is preserved, while his own is lost. Do not, gentlemen, step into the regions of fancy; but be governed by the plain dictates of common sense.

The fact then is, according to the mode of reasoning adopted by the prisoners' counsel, Major Goodridge robbed himself of his own money. Nothing is more absurd and impossible.

In the name of God, if I may be permitted this expression, what opinion can you have of a man like him, if he is guilty of this conduct? Is he in debt? There is no evidence of it. Does he want credit? No; witnesses tell you he is a man of credit, and that he has property. If he is in debt, why do not they prove it?

Who are the prisoners? They are paupers, men whose extreme poverty might drive them to depredate upon the community. It is said, the reason they are not better prepared to unravel this affair, and explain all the parts of their conduct, is, that they have had no means to enable them to carry on their defense. Yet it seems, men enough have been found in New Hampshire, to get up a subscription in their favor, and I hope their counsel will derive benefit from these exertions.

Now if it were possible for the jury to return upon their oaths, a verdict thus far, Major Goodridge would be returned innocent; for it will not be denied that he has received a shot wound, and one which is calculated to endanger his life. A shot through the nerves of the hand, with the glove on at that inclement season, must have threatened a lock-

jaw, the most terrible of all human disorders. Would any man, did ever any man, however infernal his motives, however vile his purposes, put them in execution by a course of conduct so perilous as this?

Facts, gentlemen, which do not come from Major Goodridge, are in his favor. The pistol was found in the road with blood upon it, and the whip also. These circumstances prove that the pistol was fired in the road. Let me retort; Major Goodridge is going to rifle himself, and in a place to elude discovery: Do you believe he would have shot himself in the road, and then have made the other arrangements? It is a most manifest absurdity: it is ridiculous. How does it comport with his situation? What does he swear? You recollect his testimony, and all the circumstances concur to support his relations. He was on horseback. But the gentlemen say you must not believe a word Goodridge says. It has been argued that the robbers would not have left so much money upon the ground; but it is perfectly natural. Alarmed at their situation, terrified at the fear of discovery, it is not to be expected they would exercise much deliberation.

As to the delirium, his wounds would have naturally produced a partial insanity. But it has been said that there was no reality in it; that he counterfeited madness. But is Dr. Carter such a blockhead? Is he such a novice, that he would take blood from a sane man as though he were crazy? And what does Dr. Balch say? Why, he says very gravely, that he, Goodridge, looked at him, Dr. Balch; and when he, Dr. Balch, looked at him, he, Goodridge, looked another way—and that when he crept up stairs, Goodridge raised up himself in the bed upon his posteriors. Why, gentlemen, I really do not know upon what else he could have raised himself. He hawked, and composedly spit in the fire; and notwithstanding these physicians come before you with faces as long and as wise as Æsculapius himself, yet it appears they bled him, and gave him medicine.

What do you hear from Dr. Spofford? why, that he attended him four weeks. It has been suggested that his pulse

was good, but Dr. Spofford says it was hard; that he gave him medicine; and that it had a good effect. *Ergo*, say the prisoners' counsel, he was not crazy. I mention these things to show it is all reconciliable. Now, gentlemen, I will unfold to you the history and the cause of all this excitement. There was no suspicion of Major Goodridge's integrity till he unfortunately arrested Mr. Pearson, whom I suppose to be a man of good character. Major Goodridge was informed from the same source from which he derived his information of the Kennistons, that the property was divided at Mr. Pearson's. What could he do therefore, but arrest Mr. Pearson? He did so, and the result was that Mr. Pearson was discharged from the complaints, and dragged in triumph to his house, amidst the shouts and the exultations of the rabble. He was undoubtedly indignant, and expressed his rage in the harsh language which you have heard. That he had a numerous body of friends is apparent, their feelings are enlisted in the cause, and I believe the whole infatuation, the whole delusion may be traced to the circumstance of arresting Mr. Pearson.

If Goodridge stops, it is evidence of fraud; if he goes on, it is evidence of fraud; every act of his life, every thing he does, good, bad, or indifferent, is tortured into a suspicious circumstance against him, and this zeal of Pearson and his friends has thus produced a sort of witchcraft and delusion.

Gentlemen, at this, and at every other step of the cause, I may repeat my remark, that I cannot conceive of any human depravity equal to that which is imputed by this defense, to Major Goodridge; and my acquaintance with the bad part of the community, has, by my official standing, for the last fifteen years, been pretty extensive.

Thus, gentlemen, you see, the only hope of the prisoners, is to inculpate the principal witness on the part of the government; if therefore you can rely upon other evidence, even this hope will be groundless, and the whole delusion will be dissipated, and the fact of the robbery completely established. Now the first circumstance is that the prisoners were in Newburyport that night, and give no account of themselves from

7 to 10 o'clock that evening. An alibi, one would think, might have been proved in such a populous place, if they had actually been elsewhere. There was another person when they went from Titcomb's by the name of McKinnister, who also returned with them. Where is this McKinnister, why have they not produced him? Is he gone to the place where the wicked cease from troubling, (the State's Prison)? Has he no home? Does he dwell in dens, or in hollow trees? That he is not here is certain, why he is not, is for the prisoners to explain.

It is said he is in the United States' service at Portsmouth. Even if he is, they might probably have had him here, by an application to the commanding officer.

The next morning they returned to Caldwell's, and went down under the stable, into the dark; and why did they do so? *They chose darkness rather than light because their deeds were evil.*

Gentlemen, it cannot be expected that we should prove to you that these identical men were the robbers, by any person who was a witness to the transaction. Robbers do not perpetrate their crimes in the market place or at noon-day. The places they choose are solitary, and the hour, when the night may veil them from the eyes of their fellow men.

Gentlemen, are you never to believe that a robbery has taken place, unless the person is shot dead? Is a man, who by good fortune escapes with his life, to be branded with suspicion on that account?

We will now, gentlemen, trace out the circumstances of the search at the house of the Kennistons. Major Goodridge goes to the house to search, accompanied by five or six respectable men. This was all he could do. Had he gone alone, some imputation might have rested on him. The more you scrutinize, the worse for the prisoners. Unless Leavitt is the most perjured wretch in the universe, the evidence is incontestible, that Goodridge has been robbed. He arrested the prisoners; he first went into the room where the bill was found, before one other soul of the party; he is an honest man, and

an intelligent one—this is admitted on all sides. That Goodridge had not been there before, is established beyond all contradiction. He opened the drawer, and found a ten dollar bill of a Boston Bank, rolled up carefully; he examined it; he thought it counterfeit, and threw it back again—every person would have suspected it. Major Leavitt suspected it. He further tells you that he went on in the search and never mentioned to a single individual the circumstance of his finding this bill. Some time afterwards Upton went to that drawer and found a ten dollar bill, and observed that he had found one. Major Leavitt then said, I saw the bill in that drawer an hour ago, and it is counterfeit. Upton then said, they have no right to have counterfeit money, and we had better take it. When the party arrive at Major Coffin's the bill is produced, and claimed by Goodridge as his, and he knew it, gentlemen, by the writing on the back.

As to the gold in the pocket-book, Upton says, he came down and went to the pantaloons, which were hanging up by the bed; and discovered the pocket-book, and the gold in it. And with respect to that which is found in the cellar, Leavitt says, that on the cry that the hoard was found, he went down, and Upton held up one piece of the gold, and that he then felt under and found the other piece, which had the wrapper. So that it seems, gentlemen, that Goodridge does not find anything, it is Upton and Leavitt.

With respect to Taber, if it was not Taber who had the conversation with him, some person must have imposed himself for Taber, upon Goodridge.

Gentlemen, look a moment to the whole defense set up by the counsel for the prisoners. In this defense motives are conjectured with a latitude which would best suit an oriental tale; slight incongruities are made absolute inconsistencies; actions of a common occurence are turned to mysteries. Statements are made with only plausible foundations, and insinuations without any support are followed up by ingenuity which moulds every thing as it wishes. The counsel for the government can go no farther than fairly to try in the bal-

ance, the just weight of testimony to support this indictment; he can have no feelings as a man against the prisoners. He is anxious, it is true, to discharge his duty as an officer of the government; and that duty consists in spreading the case before you with fulness, accuracy, and sincerity. I have distorted no fact, strained no testimony, and yet, gentlemen, is there not a clear unanswerable and unanswered case made out to you? But of this you are the judges.

Lastly, gentlemen, consider Capt. Howard's testimony. If Goodridge's pistol was not fired, he could not have given himself the shot wound in his hand, and consequently he must have been robbed by some one who made the wound.

Gentlemen, weigh all these circumstances, compare them together, and if the result of your investigations is a well founded doubt of the guilt of the prisoners, or a conviction of their innocence, I shall heartily rejoice in their acquittal; but if no reasonable doubt of their guilt remains upon your minds, it will be your duty to summon all your firmness, and pronounce a verdict against them.

THE JUDGE'S CHARGE.

JUDGE PUTNAM then addressed the jury in a fair and candid charge containing a clear analysis of the evidence and a just exposition of the law in the case.[6]

[6] We regret that it is not in our power to give it to the public. Our minutes are indeed pretty full but we shall not hazard to publish an abstract of a performance in which nicety and accuracy are requisites so essential as in the charge of a judge to a jury. But there was an observation which fell from the judge which we will venture to mention, for it was full of truth and beautifully illustrative of the sentiment he wished to impress on the minds of the jury. It was given when commenting on that part of the testimony which stated "that Levi Kenniston appeared agitated and sweat profusely though it was cold, looking guilty and frequently changing countenance when urged by those around him to confess what he knew of the robbery." "I am not (said his Honor) for drawing conclusions against the prisoners from such appearances of agitation and distress; for I believe the most minute and philosophical observer of human nature would, at times, find it impossible to discover the difference between the agonies of innocence

THE VERDICT.

The charge was closed about five o'clock p. m. and the court adjourned until nine o'clock next morning.—At the opening of the court, the jury returned a verdict of NOT GUILTY. The jury had not separated for forty-nine hours, since the commencement of the trial. The prisoners were then discharged.

Subsequently Mr. Jackman was tried before JUDGE PUTNAM, but the jury disagreed and on a second trial before JUDGE JACKSON he was acquitted. Mr. Pearson brought an action against Goodridge for false arrest and was awarded three hundred dollars damages.

labouring under the suspicions of guilt, and the writhings and trepidation of guilt itself, fearing detection. I believe in my heart, gentlemen, that Benjamin exhibited as much emotion and distress when the cup was taken from the mouth of the sack as a real thief would have shown the moment his guilt was discovered." Jackman's Report, ante p. 240.

THE TRIAL OF WILLIAM LLOYD GARRISON, FOR LIBEL, BALTIMORE, MARYLAND, 1830.

THE NARRATIVE.

William Lloyd Garrison, known in American history as one of the great leaders of the crusade against Slavery in the United States was in the year 1829, one of the owners of an Abolitionist newspaper in Baltimore, called The Genius of Universal Emancipation. In the issue of November 20, he wrote an article which he signed with the initial "G" in which he made a violent attack upon a New England Ship-owner named Francis Todd because he had carried from Baltimore to New Orleans in his ship The Francis a number of slaves. He said that he had carried them—"a cargo of slaves for the New Orleans market," "chained in a narrow space, between decks," and that the men "who have the wickedness to participate therein for the purpose of heaping up wealth should be sentenced to solitary confinement for life; they are the enemies of their own species, highway robbers and murderers and their final doom will be, unless they speedily repent, to occupy the lowest depths of perdition."

He was indicted in the Baltimore Criminal court for libel. He contended that it was no libel to charge a man with doing what he had a right to do, because under the laws of the United States to carry slaves was a legal business. In this he was correct, but his article charged two other things, viz, that the slaves were being carried to be sold, and second that they were carried in chains. The prosecution proved very clearly that they were not being carried to the New Orleans market, but for a humane master who had already purchased them and that on the voyage they were neither in chains nor harshly treated.

So there was nothing for the jury to do but to find the defendant guilty, which they did. Mr. Garrison refused to pay the fine which the Judge imposed and remained in jail as a martyr to the cause until it was paid by a friend and admirer.

THE TRIAL.[1]

In the Criminal Court, Baltimore, Maryland, February, 1830.

HON. NICHOLAS BRICE,[2] *Judge.*

February 24.

The grand jury of the county had previously returned an indictment against William Lloyd Garrison and Benjamin Lundy charging them with having on November 20, 1829, in the City of Baltimore published a libel on one Francis Todd. The defendants were the proprietors of a newspaper published in this city called The Genius of Universal Emancipation. The libel was an article written by Garrison and signed with the initial "G."

The indictment alleged that this letter or article referred to one Francis Todd among others engaged in the transportation of slaves from the port of Baltimore to the port of New Orleans, being therefore to be regarded and considered as an enemy to his own species, a highway robber and a murderer, and which communication then and there contained the false, scandalous, and malicious matter and libel following, that is to say: "*The Ship Francis.* This ship, as I" (meaning the said person referred to by the said letter G.) "mentioned in our last number, sailed a few weeks since from this port," (meaning the port of Baltimore,) "with a cargo of slaves for the New Orleans market. I" (still meaning the said person referred to by the said letter G.) "do not repeat the fact because it is a rare instance of domestic piracy, or because the case was attended with extraordinary circumstances; for the horrible traffic is briskly carried on, and the transportation was effected in the ordinary manner. I" (still meaning the said person referred to by the said letter G.) "merely wish to illustrate New England humanity and morality. I" (again meaning the said person referred to by the said letter G.) "am resolved to cover with thick infamy all" (meaning amongst

[1] *Bibliography.* "A brief sketch of the trial of William Lloyd Garrison, for an alleged libel on Francis Todd, of Newburyport, Mass. Boston: Printed by Garrison and Knapp, 1834."

[2] See 4 Am. St. Tr. 2.

others, the said Francis Todd) "who were concerned in this nefarious business." (Thereby meaning the transportation of slaves from the Port of Baltimore to the Port of New Orleans.) "I" (again meaning the said person referred to by the said letter G.) "have stated that the ship Francis hails from my native place, Newburyport, (Massachusetts,) is commanded by a Yankee captain, and owned by a townsman, named Francis Todd. Of captain Nicholas Brown I" (still meaning the person referred to by the letter G.) "should have expected better conduct. It is no worse to fit out piratical cruisers, or to engage in the foreign slave trade, than to pursue a similar trade along our own coasts; and the men who have the wickedness" (meaning that the said Francis Todd, amongst others, had the wickedness) "to participate therein, for the purpose of heaping up wealth, should be ☞ sentenced to solitary confinement for life; ☜ they" (meaning the men who had the wickedness to participate in the transportation of slaves along our own coast, and amongst them including the said Francis Todd) "are the enemies of their own species—highway robbers and murderers"—(meaning that the said Francis Todd was to be regarded as a highway robber and murderer)—"and their final doom will be, unless they speedily repent, to occupy the lowest depths of perdition"—to the great scandal, damage and disgrace of the said Francis Todd, to the evil example of all others in like manner offending, and against the peace, government and dignity of the State.

The defendant Garrison was put on trial today and pleaded not guilty.

Thomas Jennings,[3] *Jonathan Meredith* and *R. W. Gill*,[4] for the State.

Charles Mitchell[5] for the prisoner, Garrison.

The following jurors were selected and sworn: Daniel W. Crocker, Samuel D. Walker, William H. Beatty, John Franciscus, George M'Dowell, George A. Vonspreckelson, Stewart Brown, George A. Hughes, Andrew Crawford, Robert Hewitt, James W. Collins, John Walsh.

Mr. Meredith read the indictment and was about to read the whole article.

[3] See 4 Am. St. Tr. 3.

[4] See 4 Am. St. Tr. 3.

[5] MITCHELL, CHARLES (1785-1831). Born Wethersfield, Conn. Fourth son of Chief-Justice Stephen Mix Mitchell (Yale 1763); Grad. Yale 1803. Studied law and settled in Baltimore to practice. Died in Baltimore, see Stiles (H. R.), History of ancient Wethersfield, Conn., vol. II, p. 507. Yale College biogra. studies (1803 class), Tillotson (E. S.), Wethersfield inscriptions.

Mr. Mitchell. We object to this. No one is compelled to defend himself against charges not set forth in an indictment. The jury might unconsciously derive their impressions from passages other than those in the indictment. Suppose a man is indicted for larceny and the evidence is insufficient, can the State in order to show that he is bad enough to commit a theft, prove that on the same night he committed a murder? The indictment here contains no libel upon Francis Todd.

THE COURT. The whole article is offered to show a malicious intent in the defendant. We think it is admissible for that purpose.

Mr. Meredith read the whole article, which was as follows:

THE SHIP FRANCIS.

This ship, as I mentioned in our last number, sailed a few weeks since from this port with a cargo of slaves for the New Orleans market. I do not repeat the fact because it is a rare instance of domestic piracy, or because the case was attended with extraordinary circumstances; for the horrible traffic is briskly carried on, and the transportation was effected in the ordinary manner. I merely wish to illustrate New England humanity and morality. I am resolved to cover with thick infamy all who were concerned in this nefarious business.

I have stated that the ship Francis hails from my native place, Newburyport, (Massachusetts,) is commanded by a yankee captain, and owned by a townsman named FRANCIS TODD.

Of captain Nicholas Brown I should have expected better conduct. It is no worse to fit out piratical cruisers, or to engage in the foreign slave trade, than to pursue a similar trade along our own coasts; and the men who have the wickedness to participate therein, for the purpose of heaping up wealth, should be ☞ SENTENCED TO SOLITARY CONFINEMENT FOR LIFE; ☜ *they are the enemies of their own species—highway robbers and murderers;* and their final doom will be, unless they speedily repent, *to occupy the lowest depths of perdition.* I know that our laws make a distinction in this matter. I know that the man who is allowed to freight his vessel with slaves at home, for a distant market, would be thought worthy of death if he should take a similar freight on the coast of Africa; but I know, too, that this distinction is absurd, and at war with the common sense of mankind, and that God and good men regard it with abhorrence.

I recollect that it was always a mystery in Newburyport, how Mr. Todd contrived to make profitable voyages to New Orleans and other places, when other merchants, with as fair an opportunity to

make money, and sending at the same ports at the same time, invariably made fewer successful speculations. The mystery seems to be unravelled. Any man can gather up riches, if he does not care by what means they are obtained.

The Francis carried off *seventy-five* slaves, chained in a narrow space between decks. Captain Brown originally intended to take *one hundred and fifty* of these unfortunate creatures; but another hard-hearted shipmaster underbid him in the price of passage for the remaining moiety. Captain B., I believe, is a *mason*. Where was his charity or brotherly kindness?

I respectfully request the editor of the Newburyport Herald to copy this article, or publish a statement of the facts contained herein—not for the purpose of giving information to Mr. Todd, for I shall send him a copy of this number, but in order to enlighten the public mind in that quarter.—G.

THE WITNESSES FOR THE STATE.

Henry Thompson. I have been the agent here of Mr. Francis Todd for many years. He resides in Newburyport, Mass.; know him to be an estimable man. I contracted for the transportation of the slaves, before consulting Mr. Todd, but immediately wrote to him, stating the conditions on which the contract was made. Mr. Todd, in reply, said he should have preferred another kind of freight; but as freights were dull, times hard, and money scarce, he was satisfied with the bargain. Articles necessary for the comfort and convenience of the slaves were put on board the vessel. The slaves were purchased by a planter of New-Orleans, named Milligan, a humane master; Captain Brown was a humane man, and I had no doubt the slaves were kindly treated on the passage.

James Smith. Was the pilot of the Francis on the voyage in question; the slaves were received on board at *Annapolis*—eighty-eight in number—consisting of men, women, and children; they were not confined, but suffered to peregrinate about the ship, as they pleased. They were provided with shoes and clothing, good food; Captain Brown was the best of shipmasters.

Captain Brown. I commanded the Francis on this voyage. It was the first time I have carried a slave cargo. There were no chains put on them: Mr. Milligan was present when they embarked and told me that they were not to be sold by him at New Orleans but that he intended them all for his own estate. Relying on his honor and integrity, I considered my act—for I had not put them in bondage, they were already slaves—in relieving their condition in some degree, by taking them to a climate much more congenial to their nature, as one of the best of my life.

E. K. Deaver. Am a printer, a partner of Mr. Lucas; we printed under a contract with Lundy and Garrison, the Genius

of Universal Emancipation: can not swear that we printed this identical number but think we did.

James Lucas. Our firm printed this issue of Garrison's paper; I delivered it at their office: could not say that Mr. Garrison saw it; the editors, Lundy and Garrison, generally corrected the proofsheets.

FOR THE DEFENSE.

It was admitted that *Francis Todd* was the owner of the Francis and a letter from the collector of Annapolis was read by consent in which he stated that the Francis sailed from Baltimore to a convenient spot where she took on board the slaves and then obtained a new clearance for New Orleans from the port of Annapolis. Her manifest enumerated 88 slaves of different ages, sexes and conditions.

D. McCullough. Am an inspector at the custom house in Baltimore; the clearance papers of the Francis, which I produce, show that she cleared early in October last from the port of Baltimore direct to New Orleans with an assorted cargo but no slaves.

Mr. Mitchell argued to the jury that the law of libel was a drain through which had circulated every thing that was putrid, vile, and unseemly. It was the last and most successful engine of tyranny; and had done more to perpetuate public abuses, and to check the march of reform, than any other agent. He showed in what light Congress beheld the slave-trade—that, by one of the laws of that body, it was reprobated as piracy upon mankind, and the detection of an American citizen engaged in it on the coast of Africa, would send him to the gallows—that, by another act of Congress, all transportation of slaves from an American port to the West India islands, or to any foreign port, was prohibited under the penalty of confiscation. True, the domestic trade was tolerated; simply because it was beyond the legitimate authority of Congress, and came exclusively under the cognizance of individual states; yet that wise and venerable body, in stamping the seal of infamy upon the former traffic, fixed it as indelibly upon the latter. Distance did not change the principle. It was absurd, it was preposterous, it was wicked to contend that both were not equally base, abhorrent and disgraceful. He trusted in God that the time was not far distant,

when the Legislature would pass a law to that effect: it would be the brightest in the statute books of Maryland. As to the indictment, it was fatally defective in its construction, and contained no libel upon Francis Todd. The matter embraced therein, did not implicate Mr. Todd in the transportation of the slaves, nor charge him with being privy or consenting thereto. It merely stated the fact, that he was the owner of the vessel—nothing more; and could this, by any ingenuity, be tortured into a libel? Yet it had been proved that Mr. Todd participated in the business, though he felt some severe twinges of conscience for so doing. Evidence had entirely failed to convict the defendant of having printed or published, or of having any agency in printing or publishing, or of having written or caused to be written, the obnoxious article. The postulate assumed by the writer "G."—that the domestic slave trade is as heinous as the foreign, that it is a war upon the human species, that it is murderous and piratical—was certainly not punishable by law. A multitude of good men entertained a similar opinion; and, unless our country groaned under a thraldom as despotic as that of the Africans, they had a right at any time, publicly or privately, to declare that opinion. It was a general view of the traffic, expressed in general terms. Every Sabbath, the clergy denounced, in no measured language, popular and *legalized* vices—could they also be indicted? He reverted to the extraordinary license which had been given to the prosecutor, to read other parts of the publication not contained in the indictment, in order to obtain a verdict of guilty. It was neither *jure humano* nor *jure divino*. It was taking the defendant by surprise, by giving him no notice to prepare his evidence of the truth of those parts omitted. He passed some flattering encomiums upon the editors of the Genius, and expressed a hope that they would be sustained, not only by the Jury but by their country.

Mr. Gill maintained the legality of the traffic, the rights of slaveholders, the contentment and good condition of the slaves, the fanaticism and virulence of the editors, and the

necessity of putting a wholesome restraint upon the periodical under consideration. The Jury were to read the whole of the piece and to judge of the malicious intent of the writer.

JUDGE BRICE said that the Jury would acquit or convict upon the matter contained in the indictment; at the same time, they were authorised to derive auxiliary aid, in making up their verdict, from the remainder of the article.

THE VERDICT AND SENTENCE.

The *Jury* retired, and, in about fifteen minutes, returned with a verdict of *Guilty*.

Motions in arrest of judgment, and for a new trial, were powerfully argued by the counsel for the defendant, but overruled. He was sentenced to a $50 fine, and costs of the prosecution.

In default of payment, the defendant was committed to the Baltimore Jail where after an imprisonment of seven weeks, an Abolitionist named Arthur Tappan paid his fine and he was released. He returned to his home in Massachusetts. Subsequently in the Baltimore Court a civil action for damages for the same libel was brought against him by Mr. Todd. Mr. Garrison did not come back to defend it and the jury returned a verdict for one thousand dollars against him.

THE TRIAL OF THE PROCEEDINGS AGAINST RUGGLES HUBBARD AND JAMES L. BELL, SHERRIFF AND JAILOR OF NEW YORK CITY, FOR PREVENTING AN ATTORNEY PROM ENTERING THE JAIL TO SEE A CLIENT: NEW YORK CITY, 1815.

THE NARRATIVE.

William W. McClelan, a lawyer, received a letter from one Zenos M. Bradley, a prisoner in the jail of the City of New York, asking him to act for him as his attorney. But when the lawyer went to the jail the jailer refused him permission to enter to see his client. The sheriff did the same thing. The lawyer then applied to the City Judge and asked for an order on these officers to compel them to allow him to visit his client in the jail. To resist this order two New York attorneys appeared in court and filed the affidavits of the sheriff, the jailer and one of his deputies, in which they alleged that they believed that there was a plot among the prisoners in the jail to make their escape and that Mr. McClelan was privy to it; that Bradley was not a bona fide client of his; that to admit this attorney to the jail would be dangerous to the safety of the prisoners and the good order of the jail. And their lawyers argued that the court had no power to render such a judgment as was asked for.

But the Court answered that every court of record has authority to control its officers; that the right to employ and consult with counsel is one guaranteed to every man by the constitution and that the affidavits of the sheriff and jailers did not sustain the fears of escape or of fraud on the part of the attorney which they set up. It was therefore ordered that Mr. McClelan should be allowed at all seasonable hours to go in and out of the jail to consult and advise with his clients

and that neither the sheriff, the jailer, his deputies nor any other person should deny or obstruct him in this right.

THE TRIAL.[1]

In the Court of General Session, New York, July, 1815.
HON. RICHARD RIKER,[2] *Recorder.*

July 11.

William W. McClelan, a duly authorized and licensed attorney at law asks for an order compelling the Sheriff of the city and the jailer of the city jail and their aids and deputies to permit him to enter said jail for the purpose of seeing and consulting with a client of his, Zenos Meigs Bradley, at present confined under legal process in said city jail.

William Sampson[3] for the applicant and the prisoner; *John King*[4] for the jailer; *P. W. Ratcliff* for the sheriff.

[1] New York Criminal Recorder, See 1 Am. St. Tr. 61.

[2] RIKER, RICHARD (1773-1842). Born Newtown, N. Y. Admitted to bar, 1791: Dist. Atty, New York City, 1801-1813. Recorder, 1815-1838 (except two short intermissions). Resigned this office on account of ill health and retired to his country seat on the East River near 75th St., where he died. In 1802 he acted as a second for De Will Clinton in a duel with Col. John Swartout and in 1803 he fought a duel with his brother Robert Swartout, being wounded in the leg. For this, though contrary to the law, he was not arrested, Alexander Hamilton interposing to prevent a prosecution. He was the founder of a law business which was carried on by himself and family for nearly a century. His two brothers, who were his partners, were Samuel Riker, born in 1780, educated at Columbia College, and died in 1811, and John L. Riker, born in 1787; received his education at Erasmus Hall, L. I. In 1846 he was a member of the State Constitutional Convention. He continued the practice of his profession for more than fifty years, and died in 1861.

In the second generation, by which the business inaugurated by the Recorder was continued, were his two sons, D. Phœnix Riker and John H. Riker, and two sons of his brother, John L. Riker—viz., Henry L. Riker and Samuel Riker. D. Phœnix Riker practiced his profession for a few years only, and died shortly after the war. Henry L. Riker died in 1861, after twenty years at the Bar. John H. Riker was educated at Columbia College, and labored diligently at his profession for more than forty years. He retired in 1884, and died in 1894.

SAMUEL RIKER (son of John) born in 1832 was admitted to the bar

THE EVIDENCE.

William W. McClelan testified that he was an attorney duly admitted to practice in this court, that he had received a letter which he produced from one Zenos Meigs Bradley, who was one of his clients, retaining him to attend to the matter of his defense; that it was necessary for such purpose that he have an opportunity to consult personally with his client. For this

in 1853 and retired in 1893, the last survivor of the two generations of lawyers of the same name. Mr. Clinton (H. L.) Extraordinary Cases (N. Y. 1896) says: Probably no one upon the Bench in his time possessed a more marked individuality of character than Richard Riker. His exhibitions of keen wit and genial humor, if collected, would fill volumes. One or two illustrations will suffice to show the turn of his mind in these respects. On one occasion a man was convicted before him of assault and battery. It appeared that on the day previous to the assault the party assaulted had given the defendant great provocation—in fact, had grossly insulted him. Instead of instantly resenting the insult and giving the party a sound thrashing, the defendant withdrew and returned home; but the next day he went to the abode of the prosecutor and knocked him down. In pronouncing sentence the Recorder gave the defendant a lecture on the moral heinousness of his long and inexcusable delay in inflicting personal chastisement on the prosecutor, and, as a punishment for not knocking him down on the instant, he imposed upon him a fine which was small in amount. On another occasion, in sentencing a woman who was pertinaciously loquacious, he said: "You must suffer some. I must send you to prison. Your fare will be plain; perhaps, with fortitude, you can put up with that. But that which will cause you untold suffering—perhaps greater than you can bear—is that you will be condemned to—*silence.*" Mr. Riker's integrity and great experience made him an excellent Judge. He possessed courtly manners of the old school, a handsome person, and a kindness of heart almost excessive. It has been said of the Recorder that "perhaps by no individual, at any time or in any country, have the principles of criminal law been more firmly yet temperately administered, and the rigid rules of law more happily blended with the benign precepts of moral justice and equity. His knowledge of criminal law, from long and constant study and observation, was nearly universal, and his experience made him acquainted with all the cunning and devices of the human heart."

See 1 Amer. St. Tr. 361, 3 Id. 303, 604; 4 Id. 457, 853; 6 Id. 96; 8 Id. 875; 13 Id. 189.

[3] See 1 Am. St. Tr. 63.

[4] King, John (1775-1838). Member U. S. House of Representatives (N. Y.) 1831.-1833.

purpose he had on several occasions called at the jail but that in each instance although he had made his intention known to the jailer the latter on instructions, as he alleged, from the sheriff had refused to allow him to enter the building or to see his client.

Ruggles Hubbard filed an affidavit stating that he is sheriff of the city of New York, that he was informed by the jailer and one of his deputies that it was unsafe and would result in disturbances among the prisoners generally, to permit this attorney or another that he named to go into the jail, and that the public interest was the reason why acting on the jailer's statement he had endorsed the jailer's position.

James L. Bell makes affidavit that he is the keeper of the city jail, that both he and his assistant had decided that it was necessary for the government and good order of the jail that the petitioner and a certain other attorney should not be allowed to enter the jail; that if these men were allowed to enter they would stir up dissatisfaction among the prisoners; that he fears that their admission would result in prisoners making their escape; that there had been discovered among the prisoners an attempt to escape and he believes the petitioner is privy to this; that he does not think that the prisoner is a bona fide client of the petitioner, but it is merely a trick to be admitted to the jail.

James Fleet, a deputy jailer, filed a similar affidavit.

Mr. King and *Mr. Ratcliff* argued that the admission of a counsel within the jail to confer with his client, who may be confined therein, is a matter of *indulgence*, and not of right; and consequently, that the jailer may, in his discretion, give or refuse admission. The officers are liable for all escapes, no matter from what cause, unless it be by means of a public enemy. It might expose them to utter ruin to compel them to open daily the doors of the jail to counsel. If this be decided to be the law, no prudent man will take upon himself the execution of the office of sheriff or jailer. It will be impossible to find sureties—escapes will be inevitable: and a train of evils will follow, the extent of which no man can foresee; all of which will be averted, if it be left to the discretion of the jailer to grant, or refuse admission as he shall think proper. This Court has not the power to interfere in the summary manner proposed. If they have infringed either the right of the counsel, or the privilege of the client, that redress can be afforded only by a suit in the ordinary course

of law. And, lastly, the facts disclosed in the deposition of the sheriff, and the jailer, furnish sufficient reasons against this Court interfering, even if the right to interfere existed.

Mr. Sampson. It is the right of every man to have the benefit of counsel—that is a privilege secured even to criminals, by the express provisions of our Constitution; and, consequently, as a person confined in prison cannot go to his counsel, it follows by the most obvious dictates of common sense, that his counsel must have, of right, admission to him. Uniform usage and practice show what the law is; no case or precedent can be found in the books of a jailer refusing to admit the counsel of a prisoner; to allow of such a thing, would be to subject one of the most invaluable rights of an American citizen to the caprice of the keeper of a public prison. It is an authority which the law has given to no magistrate whatsoever, and is an unnecessary delegation of power which in the hands of a jailer might be exercised to the worst and the basest of purposes. Such a power has in itself all the marks and character of despotism. It may be exercised in secret. It may be indulged to gratify private revenge. It is irresponsible, without check or control; the danger of escape is idle and illusory; it cannot be believed that a counsel going into the jail at seasonable hours of the day to see a client, would jeopardize its safety, or diminish its security. It ought not to be believed, on light grounds, that any counsel would act so unworthy a part as to aid the escape of a prisoner. That accusation ought to be supported by *facts,* and not by *surmises.* This Court has a right to see that its process be not abused; and, therefore, it ought to interfere to restrain the oppression complained of.

Riker, *Recorder.* This Court is called on to decide a question of no ordinary magnitude and importance. In form it is a contest between a member of the bar and two public officers. In substance it involves the rights of suitors and in its bearing implicated the interests of all men whom crime, misfortune or oppression may consign to the walls of a prison.

I have listened attentively to the arguments on both sides.

I have given to the subject all the reflection that its importance demanded. I hope and believe that I have not been unmindful of the duties, the power, and the risks of the sheriff and jailer on the one hand nor of the privilege of counsel or the right of the prisoner on the other; nor has it escaped me that the decision I make this day may be drawn into precedent hereafter. That the rule which is established in reference to Mr. McClelan will be the law with regard to every member of the bar. The limitation also, which I now set to the rights of Zenos Meigs Bradley will be set to the rights of every man whose faults or misfortunes may subject him to the process of this court. I have considered too, that the same power which the jailer may exercise over a debtor may be exercised over a man accused of a crime. If counsel can be excluded in the one case they may on the other. Acting under the influence of all these serious impressions, the court will now proceed to deliver its judgment upon the three following questions:

1. Has a counsel a right by law at seasonable hours of the day to go within the walls of a jail for the purpose of advising with his client?

2. If such right exists can it be enforced by summary means or is the party injured driven to his action?

3. If it can be enforced by attachment, do the depositions which have been produced on the part of the sheriff and jailer warrant the Court in refusing to interpose?

It is here proper to premise, that when we speak of the right or privilege of counsel, we mean the right and privilege of the client. It is the sacred right of every man to be heard in his defense, to keep his own secrets, to confront his accusers, to impeach the testimony of those who come to destroy him. But as all men are not equally competent, the law allows of advocates. These advocates, whilst representing their clients, possess the privileges of their clients. But the privilege of the lawyer is, in fact, the privilege of the client—and hence it has been solemnly adjudged, that if a member of the bar should be so base as to reveal the secrets of his client,

the Court would not permit him to do it. With this explanation, that what is usually termed, and what I may hereafter call the privilege of a counsel, is in strictness the privilege of the suitors. The keeping of the jail being confided to the Jailer, an opinion prevails that he may keep it as a man keeps his own house; that he is absolute there, and may exclude whom he pleases: in fact, that the jail, for the time being, is his. This is a gross error, and has led to many of the false conclusions that have been drawn. All the books show that a jail is of such *public consequence,* that it cannot be erected by any authority except the legislature, and that it belongs to the State. Lord Coke says, "Jails are of such universal concern to the public, that none can be erected by any less authority than an act of parliament."

The sheriff or his jailer is merely the keeper. The jail belongs to the State. Hence in the writ of Habeas Corpus the sheriff, or other keeper of prisoners, are commanded "to have the body of A. B. detained under your custody." The whole course of judicial proceedings show the same thing. Nor is it true, that the jailer is absolute, and has a right to exclude whom he pleases. At common law, it is doubtful whether the jailer is bound to provide his prisoner with food. The better opinion is that he is not. Plow. 68. 2 Rolls. Abr. 32.

The statute of our State, declaring the duties of sheriff, says expressly, "that every person who shall be committed to the custody of the sheriff, or other officer, in execution of any debt or damages, shall safely be kept in prison, in close and secure custody without bail, living at *his or her own costs.* 1. vol. Rev. Laws, p. 425, § 19." Hence the legislature has provided in the same act, §16, Id., "that every sheriff, or other officer, or person, having the custody of any prisoner, shall permit him, at his own will and pleasure, to send for and have any beer, ale, victuals, and other necessary food, where and from whom any such prisoner pleases."

By the act relative to jails, it is also provided that the Mayor of this City may appoint one or more physicians, who

may grant permits in writing to any person in jail, to use spirituous liquors if his health requires it. 1 Rev. Laws, p. 433, § 34. Now it is clear, beyond all doubt, that the friend of a prisoner, confined in jail, might at the common law, and may under our statute, enter the jail, at seasonable hours of the day, to bring him food. A physician who is appointed for that purpose by the Mayor, may visit a sick prisoner, and the physician's permit in writing, will, I conceive, authorize a person to take in so much spirituous liquor as the physician thinks his patient may require. No doubt the jailer or turnkey has a right to see that this privilege be not abused.

Independent of these statutory provisions, which I consider as merely enforcing the humane principles of the common law, there are other persons who have a right to go within the walls of the jail. It is the ancient law of the land, and has never been disputed, that the coroner is to inquire into the death of all persons whomsoever, who die in prison, to the end that the public may be satisfied whether such persons came to their end by the common course of nature, or by some unlawful violence, or unreasonable hardships put on them by those under whose power they were confined. 3 Inst. 52—91: 3 Bac. 345. Sir Michael Foster, after stating the protection the law gives to jailers, and especially, that if a prisoner resist his authority, he may freely use force, and if the prisoner be killed, it is justifiable homicide. Whereas, if the jailer, or any one coming in his aid, be killed, it is murder in all persons joining in such resistance; goes on to say, that,

"In regard to the great power these officers have, and while it is exercised with moderation, ought to have, over their prisoners, the law watcheth with a jealous eye over *their* conduct: and, therefore, if a prisoner under their care dieth, whether by disease, or accident, the coroner, upon notice of such death, *which notice the jailer is obliged to give in due time*, ought to resort to the jail, and *there*, upon view of the body, *make inquisition* into the cause of the death; and if the death was owing to cruel and oppressive usage, on the part of the jailer, or any officer of his; or, to speak in the language of the law, to *duress of imprisonment*, it will be deemed wilful murder in the person guilty of such duress." Foster's Crown Law, p. 320, §25.

The instances of oppression, adds this great lawyer and friend to humanity, and to civil liberty, *which may fall within the rule of duress of imprisonment,* are as various as a heart cruelly bent upon mischief can invent. Two cases he mentions, which had come in judgment. In one, a prisoner not having had the small-pox, was confined in a room *against his will,* with a person who had it: the jailer knowing the fact. He caught it and died. This was held to be murder. Another prisoner was strictly confined in a low, damp, and unwholesome room, and contracted thereby an ill habit of body which brought on a distemper of which he died. This, likewise, was very rightly holden to be murder in the party guilty *of this duress.* These, says he, were deliberate acts of cruelty, and enormous violations of the trusts the law reposes in its ministers of justice.

Having shown, by authority which cannot be questioned, that where a prisoner dies in jail, it is the duty of the coroner to ascertain whether there has been, on the part of the jailer, *duress of imprisonment;* and for that purpose, the law says "he shall resort to the jail, and *there,* upon view, *make inquisition.*" It follows, as a necessary consequence, that he has a legal right to enter the jail, and, moreover, to convene a *jury* in the jail, and *there make inquisition.* The danger of escape from such a proceeding, must be much greater than can arise from a counsel entering the walls of a prison. But public policy remains to be examined, whether as cogent reasons exist for the admission of counsel as for the admission of the coroner and his inquest.

The principle that guarantees to every man a right to defend himself by counsel, depends upon no speculative reasoning, or artificial theories. The necessity of it at once convinces the judgment, and its humanity and equity control the heart.

Its importance has been universally felt, and universally admitted. It is a right inseparably connected with all free governments, and cannot be impaired without impairing the safety of the citizen. The 34th Article of the Constitution

of our State, has therefore provided, "That in every trial on impeachment, or indictment for crimes, or misdemeanours, the party impeached, or indicted, shall be allowed counsel *as in civil actions.*" Upon the adoption of the Constitution of the United States, the State of New York put forth its influence, in vindication of the same principle. The Convention declared "That in all criminal prosecutions the accused ought to be informed of the cause and nature of his accusation. To be confronted with his accusers and the witnesses against him. To have the means of producing his witnesses, *and the assistance of counsel for his defense:*" and they declare that "the right, aforesaid, cannot be abridged or violated. Done in Poughkeepsie, 26th of July, 1788." The States of Virginia and North Carolina, by their conventions, maintained the same sentiment, and shortly afterwards the principle was adopted by the whole Union, and now forms a part of the Constitution of the United States.

Authority, so high and imposing, superadded to the natural justice of the claim, would seem to preclude all further inquiry. It cannot be supposed, that a right which the American people have in so deliberate a manner ingrafted in the Constitution, was intended to be *partial,* or *restricted* in its operations. They could not mean it for one class of citizens, and not for another. They could not intend that he who is at liberty, and wanted it least, should have it, whilst he who is confined in prison, and wants it most, should be deprived of it. When a man is separated from his family and his friends; when his fortune, his fame, or his life is at stake; when he is shut out from the rest of the world—to deprive him of counsel is cruel, arbitrary, and unjust. And I have no hesitation in saying, that if an uncontrolled power of that kind existed in any jailer, it could speedily introduce a practical despotism.

The Supreme Court of this State has expressed its opinion in the case of Mr. Stannard, the attorney of John M'Curdy.

"It is ordered, that the said attorney be at all times hereafter, at seasonable hours of the day, admitted to go in and out of the

debtors' jail of the City and County of New York, to consult and advise the said John M'Curdy in relation to the defense of his suit."

This Court cannot suppose that the Supreme Court would have made such an order, if it had not by law possessed the power to enforce it.

My opinion, therefore, is that a counsel has a right by law, at seasonable hours of the day, to go within the walls of a jail for the purpose of advising with his client.

2. If such right exists, can it be enforced by summary means, or is the party injured driven to his action?

There is no rule of law better established than that every Court of Record has the power, by summary process, to control its own officers, and to see that its process be not abused. Hence we find it laid down by Hawkins, in his pleas of the crown, 3 v. 275, § 3. Tit. Attach:

"To be every day's practice to grant attachments against a sheriff or bailiff, &c. for oppressive practice in the execution of a writ: as for using needless force, violence and terror in making an arrest, or by breaking open doors where, by law, it is not justifiable, or treating the persons arrested basely and inhumanly." 11 Hen. 6. 42, 43.

So it has been adjudged a contempt of Court in an attorney to use reproachful words on delivering a declaration in ejectment. 3 Hawk. 278, §12; note Stra. 567. Again in §12, that learned writer says:

"It seems clear, from the general reasons of the law which gives all Courts of Record a kind of discretionary power in the government of their own officers, that every such Court may proceed by attachment for all kinds of oppression, or injustice done by them in the execution of their offices, or *by colour of them.*"

Is the jailer an officer of the Court? The answer is plain —he holds Bradley by the authority of this Court, and by that alone. Take that from him, and he becomes a trespasser. If, then, it be the duty of a Court to prevent all abuses of its process, the jailer must fall within its control. It would be contrary to the wisdom of the law to provide for the punishment of abuses in *making the arrest,* and leave, unprovided

for, those abuses which take place *in continuing the arrest.* When the person of a man is shut up in prison, he requires the protecting arm of the law. He is entitled to it. There is no doubt about it. There are a series of decisions upon the point, and Hawkins, who has collected them in his 31st§, says "it is clear that jailers are punishable by attachment, *as all other officers are,* by the Courts to which they more immediately belong, for any gross misbehaviour in their offices, or contempt of the rules of such Courts.

We find that this prompt means of enforcing the authority of our Courts, applies not only to sheriffs and jailers, but to jurors, attorneys, counsel, and all the ministers of justice. Without this authority, abuses would go unredressed, and the law would fall into contempt. Its existence is essential to the very ends of justice. It is said, the party may have redress by a suit—bring that suggestion to the test, and see whether it be true. How is he to get access to his counsel? How is he to make his complaint known? The jailer will admit only whom he pleases. Suppose that difficulty overcome; all who know the course of a suit, know that months, if not years, must elapse before it can be tried: in that time the fortune of the prisoner is swept away, and utter ruin overtakes him. Apply the argument to a criminal case. The keeper of the prison refuses admittance to counsel. The only remedy is by a suit. The attorney-general will not delay. Public justice moves on, and the unfortunate prisoner falls, deprived of the benefit of counsel. But he may have redress by a suit! Redress by a suit? when his fame, his liberty, or his life, is gone! To tell him so, is to insult his feelings, and mock his judgment. It is to impeach the wisdom of the law, and to bring into contempt the constitution of our country. I feel persuaded that no good man would wish that the great right of having counsel should hang on such a tenure. The opinion of the Court, therefore, is that a counsel has a right, by law, at seasonable hours of the day, to go within the walls of a jail, for the purpose of advising with his client, and that the exercise of the right may be enforced by attachment.

3. The only remaining question is, whether the depositions which have been produced on the part of the sheriff and jailer, warrant the Court in refusing to interfere.

It is, no doubt, in the discretion of the Court to interpose or not. But this discretion is a legal discretion, and to be used according to the due course of law. In the language of Lord Mansfield—

> "Discretion, when applied to a Court of Justice, means sound discretion, guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague, and fanciful, but legal and regular." 4 Burr, 2539.

It must, according to Lord Coke, be bounded with the rules of reason, law, and justice. 5 Coke, 100: 10 Coke, 140.

I take it to be an universal principle of the law, admitting of no exception whatsoever, that a man cannot be deprived of a known right without a specific accusation. Even where mere surety of the peace, or of good behavior, is demanded, the party requiring it must not only state his fears, but assign the cause upon which those fears are grounded. The rule is laid down with great precision by Hawkins and Sir Wm. Blackstone—It is this,

> "That whenever a person has just cause to fear that another will burn his house, or do him a corporal hurt; as by killing, or beating him; or that he will procure others to do him such mischief, he may demand surety of the peace against such person; and every justice of peace is bound to grant it upon the parties' giving him satisfaction upon oath, that he is actually under such fear, *and that he had just cause to be so, by reason of the other's having threatened to beat him, or lain in wait for that purpose;* and that he does not require it out of malice, or for vexation."

In the depositions against Mr. M'Clelan, that very material ingredient is wanting. No cause, whatsoever, is assigned to the Court for the fears which the officers entertain. Without the cause being specified, how can the Court judge whether it be a sufficient, or reasonable cause? To deprive a man of his right, or even to bind him to his good behavior upon such a vague charge, would be introducing a novelty

into the law, unwarranted by any precedent, and "novelties (said Lord Coke) without warrant of precedents, are not to be allowed." By a recurrence to the deposition of the present sheriff, it will be seen that he knows nothing of his own knowledge, and relies wholly upon the information derived from Mr. Fleet and Mr. Bell. He does not even say that this information was given upon oath. It is true he states that he believed the information; that he is actuated solely and exclusively by considerations of public duty: and that he fully believes, that if Mr. M'Clelan be freely admitted within the locks of the jail, dissatisfaction and disturbances will be created amongst the prisoners; the good order and proper government of the prison endangered; and his security, in respect to the safe keeping of the prison, put at hazard: in which belief he is confirmed by disclosures recently made, and given in evidence on the trial of an indictment in the Court of Sessions against some other attorney; but none of those circumstances are set forth, so as to enable the Court to judge of their sufficiency.

Mr. Fleet's deposition is still more loose; he says he came to a conclusion to refuse admittance to Mr. M'Clelan and one other attorney; he says he formed his determination upon information which he then, and still believes to be true: but he does not state whom he derived such information from, whether it was given upon oath or not, nor the nature of the information.

We now proceed to the deposition of Mr. Bell. He states, that he has kept the jail upwards of two years; that in consequence of the occurrences which took place, and of information received by him and Mr. Fleet, they considered it necessary, for the good order and government of the jail, and the safe keeping of the prisoners, to refuse Mr. M'Clelan and one other attorney of this Court (without naming him) admittance within the jail. He neither states what the occurrences were, nor the nature of the information which led to this decision. He neither gives the name of his informant, nor whether the information was on oath. He says that the

propriety and necessity of such resolution has, in repeated instances, since the same was formed, and in various ways, been manifested and confirmed. But he neither gives any of the instances; nor of all the various ways, does he specify one. He says, indeed, that he believes that if the regulation agreed upon by him and Mr. Fleet had not been enforced, there would have been great danger of attempts to liberate the prisoners, or to aid them, or some of them, in effecting their escape. But not the name of a single prisoner is given, nor a single fact to justify the Court to impute guilt to Mr. M'Clelan. He says, that in the belief which he entertains, he has, from time to time, been additionally confirmed, not only by a train of circumstances which have come to his knowledge, or been communicated to him by others, but by the testimony of witnesses recently given on a trial of indictment against another person, by which it appeared, that a design had been formed, and arrangements made, for attempting to liberate the prisoners, and to which design M'Clelan was privy, if not a party thereto. Here again he states no one circumstance upon which he relies, nor any fact which implicates Mr. M'Clelan. He swears, indeed, that he is satisfied that Bradley knew that Mr. M'Clelan was not admitted into the jail, and that the employment of Mr. M'Clelan is not bona fide, but merely with an intent to get admittance. But he assigns no reason for this belief, nor any cause why Bradley should not choose his own counsel. In fact, it cannot be disputed, that a man has a legal right to confide his interests to any lawyer he pleases. He will select for himself the counsel, in whose activity, diligence, or talents, he has the most confidence; and it can never be in the power of a jailer to control his choice.

If Mr. M'Clelan and any one prisoner, or any other person, have conspired together to effect an escape, it is a high misdemeanor; and upon conviction, the punishment would be very penal. He would be liable to fine, imprisonment, and removal from the office of an attorney. In case of an escape, he would be subject to an action at the suit of the sheriff,

and to all the consequences I have stated. Every person concerned in any plan to effect an escape, is subject to be indicted and punished. If an attempt be made by force to break the jail, the sheriff can command the whole power of the country to put down the attempt. The walls and bars of the prison would seem to defy any such thing. The jail is in the centre of the city. In the day-time there are a thousand eyes upon it. In the night it is strongly secured, and under the guard of the watch.

If any proof can be brought before the Court, that Mr. M'Clelan meditates a project for the escape of any prisoner in jail—bring the facts before the Court, and if he be guilty, he shall be removed as a member of the bar. As the case now appears to the Court, he has been deprived of the privilege of entering the jail, upon information given by unknown persons. It does not appear that they were sworn. The facts which they have stated are not laid before the Court. The party whose rights have been taken away, is reproached with an indictable offense: he is deprived of a privilege important to his standing as a member of the bar, to his family, his character, and his pursuits in life. This is done without his knowing his accusers, or being heard in his defense. Let any man ask himself, whether this be just? Whether he would think the measure just if applied to himself? Whether the laws of a free community ought to tolerate such manifest wrong and oppression? The opinion of the Court is, that the depositions which have been produced on the part of the sheriff, and jailer, do *not* justify the Court in refusing to grant relief to Mr. M'Clelan and his client; and, therefore, the Court makes the following order:

"On reading and filing an affidavit of William W. M'Clelan, one of the attorneys of this Court, with a letter of the defendant, addressed to his said attorney, requesting him to call and see him for the purpose of aiding the defendant with his professional services. And the said Zenos Meigs Bradley having also, by his attorney, moved this Court for a supersedeas in the above cause—On motion of Mr. Sampson of counsel for the said defendant, it is ordered, that the said William W. M'Clelan, attorney for the said defendant in the above entitled suit, be at all times hereafter, at seasonable

hours of the day, admitted to go in and out of the Debtors' Jail of the City and County of New York, to consult with and advise the said Zenos Meigs Bradley in relation to the said suit, or any other suit now pending in this Court, if any there be; and that Ruggles Hubbard, Esquire, sheriff of the said City, James L. Bell, the jailer or keeper of the said jail, the turnkeys of the said jail, or any other person whomsoever, do not deny, or in any way obstruct the said William W. M'Clelan from so, as aforesaid, going in and out of the said jail."

THE TRIAL OF GRACE A. LUSK, FOR THE MURDER OF MARY NEWMAN ROBERTS, WAUKESHA, WISCONSIN, 1918.

THE NARRATIVE.

Grace A. Lusk, a school teacher in Waukesha, Wisconsin, was, in May, 1918, tried for the murder of Mary N. Roberts, the wife of Dr. David Roberts a veterinarian of national reputation, the author of standard works on stock-breeding and a man of wealth who stood high in the business, social and religious life of the city. The defense was insanity. The trial lasted fifteen days. The facts as they appeared in the lengthy hypothetical questions propounded to the experts on mental diseases were as follows:

Grace Alberta Lusk was born in Wisconsin in 1878, the only daughter of Dr. A. P. Lusk, a practicing dentist. From early childhood she was a diligent student, but sensitive and not physically strong. She graduated from the high school and taught at several places until she was appointed a member of a state commission to examine and report on the school systems of several European countries. On her return she studied at the Universities of Chicago and Wisconsin and at the latter institution in 1912 received the degree of bachelor of philosophy. During this time she worked very hard and was troubled frequently with severe headaches; also with attacks of neuritis. She then taught in the Milwaukee public schools for over a year, doing settlement work, and in 1912 she went to Waukesha, teaching in a public school and doing literary work. Both her father and mother had peculiarities and strange ways. Her maternal great-grandmother was an inmate of an insane asylum and her mother once attempted to commit suicide. In 1914 she became acquainted with Dr. Roberts, who employed her to help him with his books. He told her he was unhappy with his wife and she became infatuated with him. An intimacy beginning with secret meetings at their offices and automobile rides ended in trips to Milwaukee and Chicago where they at different times had illicit relations. She insisted that he tell his wife so that a divorce might be arranged but though constantly

promising that he would do so the doctor could never be brought to this point, even though at a hotel one night she made him repeat the promise at the mouth of a revolver and with a Bible in his hand. They had frequent quarrels and reconciliations. Once she slapped his face and once wrote a letter to his wife telling her all, which was intercepted by the doctor.

In June, 1917, he went away on a business trip with his wife and on the night of his return Miss Lusk went to the house and acted in such a manner as to make the wife suspicious and demand a meeting of explanation the next day which was in some way interfered with by the husband. But the wife was not to be put off and on the afternoon of June 21st she appeared at the house where Miss Lusk lived. High words passed between them: the wife accused the young woman of pursuing the husband who, she declared, cared nothing at all for her. Miss Lusk contended that he loved her and to prove this went upstairs to get his letters to her. She came down with them and likewise with a revolver in her pocket. Previous to that Mrs. Roberts had told her she would drive her out of the school and out of town and that she would die as other women like her had. While Miss Lusk was upstairs Mrs. Roberts telephoned to her husband to come to the house at once. When Dr. Roberts and a friend entered the house a short time after they found Mrs. Roberts lying on the parlor floor breathing faintly. A physician being summoned he pronounced her dead and then going into the hall he saw Miss Lusk standing at the head of the stairs with a revolver in her hand and blood flowing from a wound in her breast. She pointed the weapon at him and told him to remain below. She asked for Dr. Roberts and when told that Mrs. Roberts was dead said "Oh, I am so sorry." She then asked him if the wound on her breast had pierced the heart and was told that it was too low. Several times she put the weapon to her breast as if to shoot herself again but withdrew it as if lacking the nerve to kill herself. She requested the doctor to write down a message to her father, which he did. After some time she told the doctor to leave the hall and when he did so she fired another shot into her body and called out "you may come now." He and the Chief of Police who had been summoned to the house rushed upstairs, found her desperately wounded and carried her to the hospital. Several days later in answer to questions by the officers of the law, she confessed that she realized at the time what she was doing and that her reason for shooting Mrs. Roberts was because she had called her obscene names. To one of them she said in answer to the question: "How did you come to do it?" "Because she called me such awful names. What I can't understand is, how I was so cool and deliberate."

Before she met Mrs. Roberts in her house she had made a will and had written a letter designating a long list of friends to whom she desired her possessions—books, pictures, jewelry, china, clothing and other articles—should go at her death. Also a letter to

Mrs. Roberts stating all the circumstances of her relations with her husband and telling her that the proper thing for her to do was to withdraw and permit her husband, who did not love her, and herself to marry. She declared on the witness stand that she remembered nothing after meeting Mrs. Roberts the second time until she found herself in her room upstairs: that she had not the slightest recollection of shooting her.

When the jury returned into court with a verdict of murder in the second degree, she made an assault upon the prosecuting attorney and acted in such a manner that a commission was appointed by the judge to examine again the question of her sanity. It reported that she was perfectly sane, whereupon she was sentenced to the State Penitentiary for nineteen years.

THE TRIAL.[1]

In the Circuit Court of Waukesha County, Waukesha, Wisconsin, May 1918.

HON. MARTIN L. LUECK,[2] *Judge.*

May 13.

By an information filed by the District Attorney on a previous day Grace Lusk was charged with having on the 21st day of June 1917 in the City of Waukesha, wilfully, feloniously and of malice aforethought, murdered Mary Newman Roberts. And the prisoner being arraigned had pleaded 1st: Not guilty; 2nd: that at the time of the commission of the act charged, she was insane.

[1] *Bibliography.* "The Official Record of the Proceedings in the Trial; Circuit Court Waukesha County, State of Wisconsin vs. Grace A. Lusk. Date May 13, 1918. Andrew Snyder, Shorthand Reporter, 114 Grand Avenue, Waukesha, Wis. 1379 pages."

"The trial of Grace Lusk. Closing argument to the Jury of Hon. Walter D. Corrigan of Milwaukee, Wisconsin, special counsel for the State. Introductory history of the case by J. M. Carney, Publisher, Milwaukee, Wis., 1918."

[2] LUECK, MARTIN LAWRENCE. Born 1872 Juneau, Wis. Graduated Univ. of Wis. Admitted to Wis. Bar, 1894; Practiced law at Juneau 1894-1907: Dist. Atty. Dodge Co. 1899-1903: Mayor of Juneau 1907; Circuit Judge 1907-1919.

Dell S. Tullar,[3] Assistant District Attorney and *Walter D. Corrigan*[4] for the State.

Henry Lockney,[5] *James M. Clancey*[6] and *James K. Lowry*[7] for the prisoner.

The following jurors were selected and sworn: John E. Vrooman, Oconomowoc; Charles Kurth, Jr., Hales Corners; Ernest Schermehorn, Oconomowoc; Otto C. Buhrandt, Muskego; John Lumb, Pewaukee; Peter Lerch, Waukesha; Howard Baker, Oconomowoc; Frank Gabel, Waukesha; Harry Tornow, Oconomowoc; William Howard, Templeton; W. H. Meadows, Oconomowoc; and William Koester, Oconomowoc.

Mr. Tullar. Your Honor: The State feels that the Jury would have a better understanding of the evidence if it had a view of the premises.

Mr. Clancy. I assume that under the statute they have a right to such view but it must be exercised with care and caution.

THE COURT. It is so ordered, the jury to be accompanied by the defendant and the attorneys on both sides. You will understand, gentlemen of the jury, that its purpose is to acquaint you of the physical situation and surroundings of the premises as used for the purpose of enabling you to better understand the evidence as

[3] TULLAR, DELL SIDNEY. Born 1857, East Troy, Wis. Grad. Univ. of Wis. (Law) 1881: Admitted to Wis. Bar, 1881; Practiced law Waukesha, Wis., 1883-1919; Dist. Atty. Waukesha 1888-1890; Judge Municipal Court 1895-1907.

[4] CORRIGAN, WALTER DICKSON. Born, Almond, Wis., 1875. Educated at Almond and Grand Rapids High Schools; Iowa State Coll. and Drake Univ., LL. B. 1896, LL. M. 1904; Admitted to Bar 1897; Practiced law (Waupaca 1897), Plainfield (1897-1905); District Attorney Waushara Co., Wis., 1899-1901; Asst. Atty. Gen. 1903-1905; Removed to Milwaukee, 1905; Gen. Sol. Wis. Cent. R. R. 1906-1909; Lecturer Law Dept. Marquette Univ.; at present engaged in general practice of law in Milwaukee.

[5] LOCKNEY, HENRY. Born Waukesha Co., Wis., 1874; Graduated Univ. of Wis.; Studied law with D. S. Tullar and admitted to bar 1898; Practiced law Waukesha, 1898-1919; City Atty. 1902-1908; Dist. Atty. 1912; State Senator, 1912.

[6] CLANCEY, JAMES M. Born Cottage Grove, Wis., 1857; Educated at Albion Academy; Studied law with L. K. Luse, Stoughton, Wis.; Admitted to Wis. bar; Practiced law at Stoughton since 1887; Asst. Atty. General Wis. 1891-1895.

[7] LOWRY, JAMES KERR. Born Waukesha, Wis., 1890; Graduated Univ. of Wis. (LL. B.) 1916: Admitted to bar 1916; Practices in Waukesha.

it may be produced here in Court. You are not to form any opinion in regard to this matter from the view we are about to take, and while counsel and you have the privilege of pointing out any physical facts you desire, you are not to discuss any matter of evidence in the presence of the jury.

(At the home of Bianca Mills.)

THE COURT. Gentlemen, this is the living-room downstairs. It is conceded that this center-table stood approximately where it is. This is the parlor here and the house faces north and south. There will be some evidence with respect to this room. Here is the dining-room and it is conceded that the telephone stood substantially where it is now. We will go upstairs. Here is the bed-room; there will be some evidence with respect to this room. It is in the front of the house and you will notice, faces south. You will notice the bath-room here and the location of these rooms and the stairway here. There will be some testimony with respect to that—observe the style of the door-frame. Now we will go out this way and that will give you an idea of the lay of the house. Now, we will go to Dr. Roberts' residence.

THE COURT. This is Dr. Roberts' home. I just want to show the location, that is all. Now we will go to the office.

THE COURT. This is Dr. Roberts' office. Now we will go to the Y. M. C. A. building.

THE COURT. Here is the Y. M. C. A. building. Now we will go back to the Courthouse.

MR. CORRIGAN'S OPENING.

Mr. Corrigan (after reading the indictment and pleas). Gentlemen: We expect to prove that Grace Lusk shot Mrs. Roberts twice with a Colt automatic pistol at the home of Miss Bianca Mills in this city; that the first shot took effect on the right side, passing through the body, the liver and lung and lodged in the shoulder blade; that the second shot was over the heart, shutting off the blood supply and was almost immediately fatal. The first shot was fired in the dining-room where the telephone was. Mrs. Roberts was found by her husband in a dying condition within two or three minutes of the shooting. He called for Dr. Davis who came at once and pronounced her dead. Miss Lusk was then upstairs and two shots were then heard from there. Dr. Davis went to the stair and saw Miss Lusk at the top of the stairs with the pistol. She admitted the shooting and stated her reasons. The chief of police came to the house shortly after, and joined Dr. Davis. Miss Lusk refused to permit either of them to come up, having the pistol in her hand. During that time she had given them a message which she desired to communicate to her friends in which she told about the shooting and why she had shot Mrs. Roberts and finally she requested the doctor to stand aside, after talking with him about where her heart was located and pointed out where she had shot herself and then a shot was heard and she cried out, "Now you can come up."

We expect to show on the subject of motive that Miss Lusk had been living on terms of intimacy and illicit relations with the husband of the deceased; that this had gone on for a period of two years or so; that it was accompanied by correspondence between the two at different times, by numerous letters and telephone messages and meetings which were held at places remote from the city of Waukesha; that Mrs. Roberts and her husband and Miss Lusk were at some Baptist church supper or sociable along in December, 1914, and that the husband of deceased and Miss Lusk were engaged in a conversation and that Mrs. Roberts came and asked her husband to go home with her, and we will show that Miss Lusk took offense at that and subsequently made threats of revenge on that account. That after some time Miss Lusk was designing to bring about the elimination of Mrs. Roberts from the Roberts' home so that she might marry the husband. To bring this about she undertook and threatened in various ways to make Mrs. Roberts aware of the fact that these relations existed between them, in the belief that if Mrs. Roberts learned the true situation she would separate from her husband and leave the way clear for her. About four weeks prior to the shooting Dr. and Mrs. Roberts had planned a trip to the East together. Before going Miss Lusk was particularly desirous of having Mrs. Roberts informed of the situation. Dr. and Mrs. Roberts did not come back from the East until the evening before the shooting. As soon as they came back Miss Lusk again took up the proposition of carrying out her purpose to have Mrs. Roberts informed of the situation; she called Dr. Roberts at his office over the telephone. Frank Roberts, a relative of the husband, was in the office and the husband told Miss Lusk that he could not talk with her then and said that he would be at liberty in a few minutes. The stenographer of the Roberts' Veterinary Company was there with the doctor and Mr. Roberts told the stenographer to call Miss Lusk, which she did. They had a conversation then over the telephone with respect to the question as to whether Mrs. Roberts had been informed of the situation and whether her design and purpose had been carried out. The answer made was unsatisfactory in that the information had not been conveyed to Mrs. Roberts. The doctor in a few minutes went to his home where Mrs. Roberts and Frank Roberts were and within a few minutes after Miss Lusk called at the Roberts' home and asked for the husband and he stepped out on the porch and they had a conversation as to whether or not Mrs. Roberts had been informed. The husband then walked across the park with Miss Lusk toward the Mills' home, and left her and came back. The next morning there was an appointment made between the two ladies to meet at the office of the defendant at the Y. M. C. A. building at ten o'clock. The husband intercepted his wife and caused her to refrain from going to that meeting. The two ladies met at the Mills' home at about two of the afternoon of June 21st. Mrs. Roberts called at the office of her husband just after two and he wasn't

there and she left word that she was at the Mills' home and for the doctor to call her up as soon as he got in. He came, called up his wife at the Mills' home. She said over the phone, "Is that you Dave?" and he answered "yes," and she said "I am over at the Mills' home and wish you would come over right away." He with Dr. Blott, in an automobile drove over, arriving four or five minutes after talking with his wife and discovered her lying on the carpet of the parlor. Defendant had shot herself at the head of the stairs and had called out "Now you can come." She was taken to the hospital where she stated the reason why she had shot Mrs. Roberts, which was that Mrs. Roberts had called her such awful things.

I have made no effort to go into all the details because I prefer, in this case, which is so important and which is so serious, that you should get it from the witnesses rather than from me. I have only meant by this brief statement to give you a brief outline of what the proof will show so that you may better understand the evidence as it comes in from the witnesses. I will ask you in advance not to consider what I have stated as evidence in this case, for it is our desire that you should take the evidence as you get it from the witnesses and from the evidence which is received here under the court's ruling.

Mr. Lockney made the opening statement for the prisoner.

THE WITNESSES FOR THE STATE.

Frank Smith testified to the correctness of a plan of the premises and *Warren O'Brien* to photographs taken by him the day after the murder of the rooms in the Mills' residence.

L. D. Blott. Am manager of the Dr. Roberts Co. A little after 2 on June 21st was in the office when, in response to a telephone call, went with the Doctor to the Mills' house; found Mrs. Roberts lying on her back on the parlor floor apparently dying. Doctor went across the street to telephone; while he was away I heard two shots from upstairs; heard someone call his name and saw Miss Lusk at the head of the stairs; she had a pistol and one hand seemed to be bleeding; just then Dr. Davis came in, went into the room, came out and said "she is dead, where is the other party?" I said, "upstairs." He went up and I left the house. Mrs. Roberts was in the office about ten that morning. She says "I had an engagement with Miss Lusk at ten o'clock, and the Doctor asked me not to see her and brought me over here and wants to discuss the matter first. I don't see why you are called into it." He said, "Don't understand that I don't want you to see Miss Lusk but I don't want you to see her now. I will arrange a meeting for you at some other time and place." She says, "Now what is the use of waiting, she wanted to see me; she has something to tell me and I might as well know it now I think." Then I said, "Mrs. Roberts, why not do as the doctor says? Perhaps it would be

better to see her some other time." She says "No, no, it won't do any good to wait. I have heard rumors about their carryings on and want to know the truth of it. I am sorry that he stopped me, because I will see her anyway." She says "There she is now, 'phoning him. I am going to listen."

Cross-examined. I tried to persuade her not to see Miss Lusk. I knew something of his relations with her. The first thing he said in the Mills' room was, "Good God, Mayme has been shot." Mrs. R. in the office that morning seemed excited and indignant.

Dr. Richard E. Davis. I graduated at Rush Medical College in 1893 and have practiced here 20 years; knew Mrs. Roberts all that time. About 2 p. m. June 21st was called by Dr. Roberts over the telephone to the Mills' house. He said a tragedy had occurred; got over there in two minutes, found Mrs. Roberts had been dead only a few minutes; her glasses were not on; started to go upstairs. Miss Lusk was at the top and she held her left hand out over the stairway and says, "Stop, don't come up here." Her hand was all blood and her sleeve and her waist over her dress was all blood and she had a gun in her right hand that was held pointed down towards the floor. I stopped and I backed out. I begged her to let me up to attend to her wounds. She said she would not. She said, "Oh, it is you Dr. Davis, is it?" She wanted me to tell her father something, so I went and got some paper and wrote down her statement.

This is the paper I wrote at her dictation.

"Dr. Roberts had told me again and again and again that he loved me and that he cared for no one but me, that his wife and he had never cared for one another and that he cared for me more than any one else in the world and that he promised me that he would tell her before the 15th of June. He swore that on the bible. I told him that if he didn't care for me that we could drop it all, that the one dishonorable thing we were doing was deceiving her. I went over to see her last night and he brought me back through the park. I asked him again if he cared for me; he said he did; he promised to go home and tell her. I called him up just before Mrs. Roberts came. He said over the telephone that he had told her he cared for me. She came and said to me that I had been chasing him to death and that I was the damnedest fool that ever lived. She called me every name, called me such awful things—she called me such awful names. I am leaving enough money. I want Miss Mills to be paid for every damage done to this place. Everything must be paid for, father must see to that. Every debt of mine is listed in my desk. I give you the address of my friend Winifred Frye, Santa Barbara."

That was quite fragmentary and she was under nervous stress when she made that statement.

When I was writing this the Chief of Police came. She asked me if it was Dr. Roberts. I said, "no;" it was the chief of police and she wanted to know what will they do with me, will they take me to jail? I said yes. She shook her head and said, "no, never." I stepped on this stairway and had a conversation with her and tried to have her allow me to go up and dress her wounds, etc., and she would not allow that. That she wanted to die. She pointed a finger to the bloody spot upon her waist, "the hole is right there," she said. "Did that go through the heart?" I told her no, it was apparently too low. Then she says to me, "would you please go away." She was in this position (witness indicates) just ready to shoot herself and then she dropped the gun again on the floor, kind of relaxed and looked down and saw that I was there and then she says, "will you go away" and I walked out to the library table in the middle room; then I heard the shot, then I came back and she says, "now you can come up here." The chief of police and I went up. We had her laid on a stretcher and she looked up and kind of smiled and said "It is so strange, I love him still." I asked her why she would do such a thing and she answered because she called me such awful names. She thought that she was dying and I think that we sent for the minister. Before she fired the last shot into her body I should judge was probably an hour or an hour and a half.

That night with Dr. Murphy I made a post-mortem of Mrs. Roberts. We found two gunshot wounds and on her right hand there was a little suspicion of slight abrasion. One of them was immediately fatal. That entered the body between the ribs on the right side and it passed through the liver, the diaphragm and the lower lobe of the lung and out through the rib near the angle of the left side. We cut the bullet out from under the skin just near the angle of the scapula. One could not walk after receiving that wound. As to the other wound the entrance was in the left breast and entered the aorta about an inch above the heart. All blood comes or goes through that into the system, a bullet going through the aorta would cause the victim to drop at once. These two bullets are the ones we took out of her body;

I have had 15 years' experience in the examination and treating of insanity. At the Mills' house Miss Lusk did not show anything that indicated melancholia of any grade, kind, or degree. She did not show anything there in her conversation or appearance that indicated any mania of any grade, kind, or degree. Her attitude and answers and conversation were apparently rational. Basing my opinion on what I observed and heard her say, she was, in my opinion, sane. Nothing in her appearance or conduct indicated a trance-like state. As she appeared to me and as she talked to me in my presence she was capable of distinguishing between right and wrong.

Cross-examined. Had not seen Miss Lusk very often before

that but had treated her some years before for a sore throat. I thought there was peril from her command for me to stop, if I did not get out of there that she might do some shooting and I stepped out. I didn't know what she was going to do. I wasn't going to take any chances. Did not notice any strange expression; she was pale as though in pain; her voice was rather strained. Every time I tried to go up there she would insist that I would not; 5 or 6 times at least. During that time I was talking to her from the foot of the stairs. She sat down on the top of the stairs a part of the time. I think that she laid the revolver down beside her once or twice. I got the paper on which I wrote her statement from the library table. It was 40 minutes after the chief arrived before the second shot was fired; the bullet passed clear through Miss Lusk's body; after I told her she had not touched the heart, she would raise the gun and then drop it. She was spurring herself on so as to commit the act; then she couldn't quite do it. She wasn't probably very much wrought about it, not very much; she was rather calm for a person acting under those circumstances. Her second shot penetrated the lung; she was unconscious; we carried her down on a stretcher. Mania, melancholy and dementia are acquired species of insanity.

Mr. Clancy. Assuming that the functions of the human mind are thought, feeling and volition you admit that those three functions must work in perfect harmony, must they not doctor? Yes, and they do work in harmony. But if there is anything inharmonious about their operation, then you have a disturbed mental condition? No, not necessarily. There is a great latitude to be given within normal limits.

THE COURT. Do you contend, Mr. Clancy, that a person is not responsible for crime who has the power to distinguish between right and wrong and not the power to abstain from doing the wrong act although conscious that it is wrong?

Mr. Clancy. That I understand, Your Honor, to be the rule.

THE COURT. Now if a person has the power to distinguish between right and wrong but lacks the power to abstain from doing wrong that person is legally responsible for crime in this state.

Mr. Clancy. I am simply trying to find out what experience this expert had. Now he has qualified himself to speak as an expert and they have qualified him as an expert and I am just testing his ability on that.

THE COURT. I want to make a statement to the officers, that the jurymen, if they so desire, may have the newspapers, but they are to clip from them all references to this trial and if the jurymen want to send any communication home or otherwise they cannot send it personally over the telephone, but must ask the officer to send out the communication for him. It won't be necessary to call me.

May 17.

Dr. William T. Murphy. Have practiced medicine here for 14 years; have had experience in insanity cases; agree with Dr. Davis as to Mrs. Roberts' wounds; heard his testimony also as to his conversations with defendant and her actions; they showed nothing indicating melancholia in any degree; would consider her sane and capable of distinguishing between right and wrong.

Cross-examined. Normal minds cling to life. But normal minds may wish to die, also. Normal minds wish to take their own lives sometimes. It is perhaps not within the power of any one man to give the definition of insanity. There are as many definitions as there are authorities. A sane person could contemplate suicide with composure. I think from what I have heard here and my understanding of insanity that she was capable of judging the nature and the quality of her act. I reason from the whole general procedure, taking all in all, not one particular thing of the general attitude that he described from the conversation from the logical message that she dictated; those are the things that I base my judgment on.

Don C. McKay. Have been Chief of Police here for 8 years; in response to a call from Dr. Roberts, went to the Mills' house; found the body on the floor and the glasses there near the couch. Dr. Davis told me that Mrs. Roberts was shot and that there was a woman at the head of the stairs with a gun and while we were talking the woman spoke to Dr. Davis and asked who was there and the doctor told her who it was. She asked Dr. Davis what they would do with her and the doctor told her they would take her to jail. I saw that she had an injury and that there was blood and I tried to persuade her to allow the doctor to come up there and attend to her and she refused. She told me that he wasn't her physician, she said Dr. Harkness was. We wanted to get that gun and she said no, we couldn't come. She asked Dr. Davis where Mrs. Roberts was and the doctor told her that she was dead and she said "Oh, doctor, I am sorry, I did not mean to do it." She asked Dr. Davis to tell her father she was sorry for what she had done and to write a message for her and the doctor did the writing. She pointed the gun at herself several times. She said that she called her such awful names. Dr. Davis picked the pistol up on the floor, and we moved her from the head of the stairs and I sent for the stretcher.

Cross-examined. The first person I saw at the house was Dr. Roberts, then Mr. Blott on the porch. When she spoke of her father she cried. She did not evince anything that would indicate that she was attempting to do that which ordinarily shocks the human mind, there was no expression of horror, no expression of fear. She did not seem to be afraid. The several attemps to bring the revolver up to her breast was deliberate, carried out calmly; the conversation was calm and deliberate and dispassionate.

A. C. Willbee. Am an insur-

ance agent here, formerly a school teacher with Miss Lusk. Met her about 10 a. m. June 21 on the street; she said she was going to California in a few days; a little later in the Y. M. C. A. building she asked me to leave, as some old students were coming to bid her good bye; said she would see me again at 3 o'clock.

Dr. David Roberts. Deceased was my wife; we were married in 1889; have lived here 29 years; first met Grace Lusk in July 1914 at a church social; the spring of 1915, I had been writing a book on cattle breeds and origins and I called on Miss Lusk at the Y. M. C. A. and asked her if she could help me on this book. She said she thought she could and would be glad to do so. Miss Lusk called me up one afternoon and asked me to bring over the book. I went over to the Y. M. C. A. and I took the manuscript with me, and we discussed the book and the nature of it. During our conversation Miss Lusk asked me if I loved her. I said "Miss Lusk I honor and respect you." "Well," she said, "I don't care to be honored or respected; there are other things that I want." Then I says, "what do you want?" She says, "I want you to take me to Chicago for a good time." I said, "You would have a lot of respect for a married man that would take you to Chicago for a good time." She said, "other people do those things, I don't see why we can't." That was all that occurred on that occasion. We worked on the book both at Waukesha and Chicago preparatory to the printers getting it. About 15 months. During the time that we were working on that book there were intimate sexual relations between me and Miss Lusk; also correspondence and many meetings. I wrote these letters to her.

Mr. Corrigan reads to the jury the letters of which the following are extracts:

(1) When I passed through Chi. I transferred over to the Twelfth street station; our tracks were still fresh on the sands of the shores. It is after midnight and must stop but would like to write a lot more and say just what I would like to say and say it just as I feel. It would be some saying and feeling that cannot be described by the few words that poor old Dan got together; some people call it Boo but how mild for a big, strong, healthy, vigorous, ambitious fellow to say Boo when he feels like more noise than a locomotive. Good night little one—will see you soon—wish it were right now, now, now.

(2) Just got your perfectly dandy letter and am so glad to hear from you and no one got it but myself. Only have a moment to write to you to let you know that nobody but me got it. This is fine weather and it makes me feel like going out to pasture as we once did. Of course I think well of you and in the kindliest of feeling; my letter last night will include that. So good by dearest. See you soon.

(3) Found your very kind letter awaiting me here. I am glad

to hear you are having a good time, some parties every night. Leave here Friday A. M. for Portland where a stop of two days will be made. Having a fine trip but don't think am as crazy as some people about traveling except on short trips. Meet lots of fine people on trips and have a pretty good time but don't like new friends like old ones, so am anxious to get back to old Wis. for many reasons that I don't care to give at this time.

Dr. Roberts. Was ordered by court to bring her letters to me; here are all that I have kept.

Mr. Corrigan read them to the jury. The following are extracts from them:

(1) I am so sorry dear, I couldn't sleep because I lost my temper, so forgive me. I won't do it again. Perhaps when I explain why I've been so hurt you'll understand. When you like me again—will you call me up? You may also call me down if you want to. I am sorry and I care for you.—Grace.

(2) My dear—There are two things that I think are better not said over the phone. If I come down it will be on Northwestern leave Milw. at 6 arrive Chicago 8:10. Be there to to meet me if you can. If you can't be there at 8:10 I'll wait in ladies' waiting room or near there for you. Wouldn't it be well for you when you go into Chicago in the morning to phone Morrison and have that room 2002—or a similar high one reserved. And you could take your bag there before you came to meet me in eve. Hadn't you better have your mail sent to Sherman? By the way if anything should happen that I could not come I would have Miss B— telegraph you—to Sherman or Morrison? When you phone me in morning tell me which hotel to telegraph to. Also don't you think it might be best not to use the name of R—— there? Here's hoping. P. S. Be sure you tell me how and where you will register so that if I should miss you at station I'd know where to phone or where to go. When you phone tomorrow better say "My friend Mrs. ——— will be at ———. I think the less said over the phone the better.

(3) Dearest—I can't seem to find any polite writing paper that fits any polite envelope down here. Do you mind having an assortment or are you so dizzy with joy at receiving any letter from your little fren that you can't see the paper? Of course it's up to you to say "why certainly." I wish I were with you in that nice old Chicago town. Oh, just wouldn't I make you sit up and take notice. I certainly shall keep you busy when we do have a reunion won't I?

Intermission

I had to stop and drill my young hopefuls for most two hours —now it's six o'clock. I don't like these disjointed letters. When I sit down to talk to you I don't like to be disturbed. Suppose you are thinking of supper—oh don't I wish I were at Hotel Sherman putting some powder on my nose preparatory to going over to the Boston Oyster Palace for a filet mignon (Isn't that the nice steak?) Are you going over by Mr. Kranz's shop? I do hope so.

I'm so fond of the boxes that he sometimes sends me. Hope you have good luck dear, I want you always to be happy and successful. I love you just heaps and heaps and then some and—I want to tell you so in every possible way—Perhaps I can soon any way, here's hoping—Enclosed find six thousand and twenty-three bear hugs etc,—As always your Lil' Fren'.

(4) Chicago, 4:30 P. M., Thursday. Dearest: I'm here—and so lonesome for you, what's this dull town to me when you're not here. I keep looking at the door so see if it isn't time for you to come I miss you so. I wonder if you thought as much of me as I have of you today. It was nice of you to call me up today, I just loved you for it. Went over to Field's and shopped. Found some silk for a skirt at a wonderful bargain—$2.00 marked down to $1.35. Am I not the Busy Shopper. I bought a beautiful present for you—and a beautiful present for Miss Blodgett. See if you can tell which is which. I want you both to wear 'em on Easter Sunday. Ask Miss B to take the name off from yours if you like it. I hope you do. I wanted to get you something else but was afraid you couldn't use it. It was so sweet and generous of you darling to send me down here. You've done lots of things to make me love you, but this I do appreciate more than anything because I know that in your heart you hated to have me go—I'm just thinking of you every second and trying to imagine you are here with your dear arms about me and your lips on mine—Oh my darling, I love you and love you. I'll write you tomorrow you sweet darling. Good bye

(5) My dearest-dearest-dearest. I can't go to sleep until I ask your forgiveness for being cross today. I love you so much and I want you so awfully that it seems as if I just couldn't stand it sometimes. I've been working too late down in that stuffy old school-room and I've been unhappy because I want you. I loved your kisses and I love you, you darling. I'm glad that you told me that you loved me—and that you kissed me so tenderly. It's made me happy to think of that. I think this is the spooniest letter I ever did write—but I can't help it—it's nothing to what I'd say if I had you here.

(6) My dearest: I keep thinking of you—I never wanted so much to see you. I felt that you needed me. I thought that I would try "thought telepathy" or something and make you drive past. Let me tell you one thing, you let her scare you to death. Why don't you come out frankly and say that you care for me—and that she can go her way and you will go yours. The moment you would say that she would back water if that is what you want. But why don't you let her have her way? The moment she sees that she can't bluff you and scare you that moment the fuss will be over.

Dr. Roberts. On June 1st 1917 I saw Miss Lusk at the Wisconsin Hotel, Milwaukee, mail a letter which she said was to my wife; next morning I went to the Post Office and got it. This is it:

Waukesha—Thursday

My dear Mrs. Roberts—

I have just come from spending the evening with your husband. He has told me the full details of your Eastern trip etc. We plan to be together tomorrow (Friday) in the city. I am going to ask him then to decide finally between us. He has told me that it was I who had all of his affections. I have begged him to go to you and tell you the situation frankly for I felt you were a big enough woman to desire his happiness. If he does not care enough for me to do that, if it is I who have been made the plaything—then I'm afraid I shall call him to account. Wouldn't it all have been much simpler if instead of intimidating your husband you had faced matters frankly and squarely and given him his freedom when you lost his confidence and—all? It is he who has been made—*not truthful*, and I who have lost my one and only reputation that *you might* keep your "throne." It really isn't quite fair is it?

Dr. Roberts. When she asked me to meet her in Chicago on March 8 I told her I could not as I had to take a business trip then; this was over the phone; she said, "Yes, you are going to Chicago." I says, "Miss Lusk did you mean this as a threat or what?" She says, "I don't care what you call it but that is what I mean." I says, "I wish you would explain yourself a little more fully." Then she says, "Very well, I will call you up a little later and I will explain more fully." In about half an hour she called up and said, "I have written a letter to Mrs. Roberts and I am going to send one of the girls to deliver it to her personally, telling her everything. I am going to leave on the 3:30 car for Chicago, but I want your final decision." I says, "very well, I will call you up a little later." So I hung up the receiver and in a little while I called her up and said, "I have decided to meet you, where do you want me to meet you?" She said, "you meet me at the Union Station at Milwaukee at 5:30." When I met her at the Union Station at Milwaukee we quarreled a little about going to Chicago. She went to Chicago on the St. Paul and I went on the North Western. I asked her about this letter that she wrote to Mrs. Roberts and she said I have it.

Another time she phoned me to meet her at the County Line. I drove my auto out there and she got in and we drove a little way from the station. She said, "I have something to ask of you" and I says, "what is it?" She says, "I want you to tell me now that you love me more than anybody else on earth, I want you to tell Mrs. Roberts the same thing." I says, "that is out of the question, I can't do that truthfully," and we quarreled and she says, "you won't do it?" I says "no, absolutely not." At that she struck me in the face as hard as she could strike and then we quarreled and I took her to the next car and back to Waukesha.

About June 1st I took her for an auto ride and she insisted I

meet her the next day in Milwaukee; this was the time she posted the letter to my wife. I said "what do you want?" She says, "I want you to get a room and take me out to lunch," and I did so. We left the lunch table and walked over to the window and sat down and she said, "I have something very important to say to you." I says, "very well, what is it?" She says "I want you to promise me right now that you love me more than anybody on the face of the earth and I want you to tell Mrs. Roberts so too." I says, "that is out of the question" and she says, "you won't?" I says, "why I can't truthfully." She says "very well, you sit right here" and she stepped back to the end of the room and when I turned around she had a revolver in her right hand and was unfastening a wrist watch or the one on her wrist and laid it down on a table, then she pointed the gun at me and said, "I will just give you five minutes to decide whether you want to tell Mrs. Roberts what I want you to tell her or not." I stood up and walked towards her and she said "Don't you take another step or I'll kill you just where you stand," and so I stepped back. She says, "I want you to put your hand on that Bible and promise this to me." One of those Gideon bibles that they have in the hotels. I put my left hand on the bible and held my right hand in the air and promised that I would tell Mrs. Roberts what she wanted me to tell her. I begged her not to make me tell Mrs. Roberts until we had returned from our Eastern trip on which we expected to leave in a few days. She said "will you tell her then?" I says, "yes."

I got into my auto and rode home. Early in June Mrs. Roberts and I went to Worcester, Mass., to a Stock Association meeting, afterwards visiting other Eastern cities; we returned about the 20th, went at once to my office. Miss Lusk called me up; she wanted to know when I had returned and if I had a nice time and if I could take her for a ride. I told her that I could not, that my nephew was waiting for me at the house. She said, "can I meet you tomorrow?" I says, "I am going to be very busy, I'm afraid not." She said, "I insist upon seeing you tomorrow." I noticed she acted like she was angry and I motioned to Miss Blodgett to step to the other telephone which was a few feet away. She says will you meet me in Milwaukee tomorrow? I says no I can't meet you. She says I insist upon your meeting me. Well I says, very well Miss Lusk if you want to meet me tomorrow I will meet you at the residence of Mrs. Youmans. She says I don't want to meet you there, I don't want to drag anybody else into this. She says if you don't meet me in Milwaukee tomorrow there will be something doing and Mr. Lockney will have charge of the case. I says, Do you realize the danger of threatening people over the telephone? She says I don't know about that. I says just repeat that again. She says will you meet me in Milwaukee tomorrow? I says no. I will not, go ahead with the rest of the threat and she would not but

stopped and hung up the receiver. After I had been home a few minutes my doorbell rang and my nephew opened the door and I heard Miss Lusk ask if Dr. Roberts was in. I stepped to the door and I said good evening Miss Lusk, what can I do for you, and she says "I came over to see if you had told Mrs. Roberts what I wanted you to tell her." I said no, I haven't yet but I will. Mrs. Roberts stepped to the door and she said, You folks come in and talk and Miss Lusk answered I can't stop but a few minutes so I won't come in. Miss Lusk said I just came to see if Dr. Roberts had told you what I wanted him to tell you and I answered, Why, no, Miss Lusk I have just told you that I haven't told Mrs. Roberts that but I will tell her and at that Miss Lusk spoke to Mrs. Roberts and said I want to see you about something and Mrs. Roberts answered very well, I live right here and would be glad to have you call at any time; at that Mrs. Roberts stepped into the house. She then said I want you to walk over home with me and I says I can't do it, my nephew is waiting here to see me. She says I want you to. At that I excused myself and took my hat and told him to wait until I got back as I would only be gone a short time. I asked her, Miss Lusk what do you expect to gain by coming to my home as you have tonight? I don't remember what her answer was. That is the only part of the conversation that I have any distinct recollection of. When I went back home Mrs. Roberts said what did Miss Lusk want and I told her that Miss Lusk wanted me to tell her that she was infatuated with me and wanted me to give her up so that she could have me.

Next morning I went to my office about 9; my wife came in about 10; soon left saying she had an appointment; a few minutes later I saw Miss Lusk going to her office; went out and met my wife on the street; she said I am going in here to see Miss Lusk. I says I don't want you to meet Miss Lusk this forenoon. I says I have been talking to Mrs. Youmans and I want you to come back to the office with me and I will tell you what Mrs. Youmans and I talked about. That morning I had called Mrs. Y. into my office and told her that Miss Lusk came over to my house the evening before and that I was afraid of trouble. I wanted Mrs. Youmans, whom I knew to be a friend of Miss Lusk and also of Mrs. Roberts to meet with Miss Lusk and Mrs. Roberts and talk this over. Mrs. Youmans couldn't see them that morning because she was going to Milwaukee and she said I will see you when I get back. Mrs. Roberts wanted to see Miss Lusk. I says I don't want you to see her until Mrs. Youmans gets back from Milwaukee. Mrs. Roberts says Well, I want to see her, I am bound to see her. Why I says all right I will go over with you to the Y. M. C. A. She says I don't want you to. Mr. Blott spoke up and says I will go over with you. She says I don't want you to go. I want to see her alone. We went home to lunch and I went over it again and said it was just foolish to see Miss Lusk until Mrs. Youmans could get back to meet

them together. When I got back to the office Miss Lusk called me and said why didn't Mrs. Roberts meet me this forenoon? as she agreed to. I says because I asked her not to. She says why not? I says I want some one with her when you meet. She asked me if I had told Mrs. Roberts what she wanted me to tell her; I said yes; she said when did you tell her? I said last evening. She said what did she say and I said she said a lot of things. Miss Lusk hung up the receiver then.

I stepped out of the office and when I came back Miss Blodgett told me my wife wanted me. I got her on the phone and she says I am at Bianca Mills', can you come over? I says yes. Mr. Blott and I got into the car and drove right over. I got out, rang the bell, and no one answered. I looked into the parlor and saw Mrs. Roberts lying there. I saw that she was dying, and called Mr. Blott. I said "My God, see what has happened to poor Mayme." I rushed across the street to Sam Mills' residence and called up Dr. Davis. I told both Dr. Davis and the chief of police afterwards to come over immediately.

I heard two gun shots just as I went between the house and the sidewalk, apparently from the upper part of the house. There was no weapon near her body; Miss Lusk and I had quarrels in the fall of 1916; she objected to my taking my wife to functions when she wanted to go riding with me, I always gave in.

Cross-examined. Am 52 years old; have lived here 29 years; have been State Veterinarian and a trustee of the Baptist Church; my book on which I engaged Miss Lusk was pertaining to the different breeds of cattle; to advance the cattle industry.

May 20.

At that meeting at the Y. M. C. A. Building where she first told me she loved me and wanted me to take her to Chicago. She said that she expected a letter from a sweetheart in Milwaukee and it didn't come and it made her mad; we kissed each other; don't remember who kissed first; I owned two autos; I went to Chicago on the average of once a week or once a month during the year of 1915 and Miss Lusk went to Chicago to meet me on this book several times; we went to movies and other shows; lunched together. I gave her money for her expenses; she went shopping a good deal. In April I was going to Milwaukee on the electric car; saw her on the opposite seat with a gentleman; later an elderly man got on whom she addressed as father. When we got to Milwaukee Miss Lusk handed me a note in which she asked me if I could meet her at the Hotel Wisconsin and I met her there. Miss Lusk wanted me to get a room and have dinner or take her out to dinner and I asked her what she did with her father, and she said I bought him a new hat and sent him back to Waukesha; and I said Miss Lusk you should have brought your brother down from college and taken your father and brother out to lunch together. And she said my father don't care for that kind of enjoyment. Well I says neither do

I care for anybody that will treat their parents as you have treated your father and for that reason I will not take you out to lunch. She says very well if you don't, some one else will, and named a married man in Milwaukee. I left the hotel then.

It was at the County line; she got angry and struck me in the face. It took about three days before my eye was in a normal condition. I could notice little black drops falling in front of the pupil every little while.

Mr. Corrigan. The defendant's counsel has kindly consented that I call a witness who wishes to leave town.

Walter H. Steiner. Am a special Agent of the U. S. Department of Justice. Saw defendant at the hospital on June 26; I asked her if she realized at the time what she was doing; she said that she did. She said that she was in a perfect state of mind, sound state of mind at the time she committed the tragedy; her reason for doing so was because that Mrs. Roberts used obscene language with reference to her. Morris S. Tullar, the District Attorney and the Sheriff, Albert Morris, were present.

Cross-examined. I told her I was there in my official capacity; she seemed cool and placid; we joked a little about things.

Dr. Roberts. When she came to my house the evening before the shooting I said Good evening Miss Lusk and she sort of sneered at my calling her Miss Lusk, as if I should have called her Grace. I asked her what she expected to gain by coming to my house that night on our way through the park. I kissed her and I said I love you Grace and I am sorry that you are feeling this way. I meant it as I had always meant it to calm her and comfort her if it was any comfort to her.

When I wanted her to meet Mrs. Yeomans, I planned that Miss Lusk should drop me instead of for me to drop her. She had asked me to tell Mrs. Roberts that she was infatuated with me and wanted Mrs. Roberts to give me up so that she could have me. I never told her at any time that my home life was unhappy. There were times that I liked her very much and I may have loved her.[8]

Elizabeth Blodgett. Have been stenographer for the Dr. Roberts' Co. for 4 years; frequently called up on the phone for the Doctor and Miss Lusk. On the evening of June 20 heard a conversation between them. Heard her say I want you to meet me in Milwaukee tomorrow, if you don't I will have Mr. Lockney take charge of the case. He said do you know the penalty of a threat over the telephone and she said, no. And he says go on and repeat the rest of it and she didn't say any more, she hung up the receiver; she used to enclose letters for him in envelopes addressed to me; several times she sent me a little present for my trouble.

May 21.

Dr. Roberts (recalled). The

[8] The witness' cross-examination occupied the most of two days but was devoted mainly to minute details of what he had testified to his direct examination.

last year of my acquaintance with her I hadn't noticed anything wrong with her mental condition. Considered her perfectly normal except when she was angry.

Mrs. Gretha Neumann. Mrs. Roberts was my daughter; I lived with her; she was 52 when she died.

Mrs. Mayme Ward. About Oct. 9, 1916 I overheard a telephone conversation between Miss Lusk and Dr. Roberts on the same party line as the Y. M. C. A. I went to telephone and there was somebody talking. Of course I listened. Miss Lusk said she wanted him, the doctor, to take her some place, but where I don't know and he said he couldn't as he had another engagement and she said if he didn't take her that evening that she would send his letters to his wife and by special delivery in the morning. He said Oh, Grace you can't be feeling very well and she said, Oh there is nothing wrong with me.

May Collins. Am Superintendend of the Hospital here; defendant was brought there about 3 P. M. I asked her what had happened. She said that she had been in a quarrel with Mrs. Roberts. That she called her such awful names. Asked me if I thought that she would die. I asked her if she wanted to, she said yes, and to telephone her father.

Alvin J. Redford. Am a policeman here; got to the Mills' house after the shooting about 2:45; Dr. Davis asked her why she did this and she said Mrs. Roberts called her such awful, awful names. Went to Miss Lusk's room after we took her to the hospital; found some letters, some cartridges and two empty shells. There was blood on the writing desk and on some paper that was on the writing desk. Remember finding this.

Mr. Corrigan. They read as follows: (1) "This is the work of the man who said he loved me. God forgive me, I love him. Pay Bianca for the house, I have spoiled it. I love you."

(A ten and two cent stamp uncancelled.)

(2) "My dear Mrs. Roberts: Why did you not keep the appointment made at your urgent request? Is it that you do not want to know the truth about the affair? I do not think that it is necessary to have a "scene" or anything of that sort. I have asked Dr. Roberts to tell you this and he promised me that he would before the 15th of June. To me the only beastly part of this has been in the * * * but if we can see one-another it will clear up all of this misunderstanding. It seems to me the wisest for all concerned. If Dr. Roberts is afraid to have you hear the truth from me I should think it would make you realize that there was something you should know. Most sincerely Grace A. Lusk.

(3) An envelope with some enclosures endorsed.

(4) "In Explanation. It is a bit hard to write this for the majority of folk who don't care for me and who have been so active in criticising me, I have no explanation. I should have known better than to play with fire: I should have known that men have one code of honor for the women they love and another for

the woman to whom they are married. I have had the theory that love between man and woman was stronger than all the legal ceremonies in the world; when that was lacking there was no sanctity in marriage. I still believe so. But the man in the case has been too much of a coward to face his wife and tell her the truth. He has never been true to her. Now that I have had to suffer I am going to insist that he tell her how matters stand, that he be honest with her. If he will not, if he is still afraid he will have to be afraid of me this time. I am not the type of a woman to be lied to. Oh, I am sorry, sorry, sorry that this has happened—yet I would rather have had this experience, painful as it has been, than to have gone through life without knowing what love can mean. I can't honestly feel that I have been "sinful." We have cared as much for one another as a man and woman can—the only treason has been in not telling Mrs. R. I have always wanted to, but he was afraid. Ah, well, it will soon be over. I am not afraid. I have loved my friend very, very dearly. I have made my work my religion, *Labor re est orare.* I have tried very hard to put the best there was in me into it. *Labor re est orare* sang the monks in olden times. God my brothers takes our toil for homage sweet. I hope dear father doesn't take this too hard. I have never caused him so very much worry. I want him to forgive me now. I just can't live as I have been living these last few weeks—I have been almost crazed with heart-ache and humiliation—Please give enclosed letter, unopened, as addressed"

The Business Part. "I wish to be buried at Stoughton, not much fuss over a funeral. If Mr. Westcott will be so kind, I'd be very glad if he would say the little prayer at the end. I think that perhaps the little new grey frock from Heller's will be ready for my last "party." Fresh underwear will be in my top drawer. I want my turquoise pin with me and my two diamond rings. My bank books are at the bank. The school board owe me $200—I have taught all but ten days of the year. (Do not let them deduct all of the June check.) My savings account had no interest allowed (when the bank book was turned in last January) on $175 etc. deposited after June 1st. That interest shall be added to the interest on the next sum that was in the bank Jan. 1st.

Ask Jennie Hale and Mrs. Gregory if they will come out and straighten things out. Perhaps Maude Shafer will help—Ask Maude if she will please write any necessary letters. Father of course has the right to dispose of my personal things as he wishes but I should very much like to have my friends have my little things much as I have designated. Pay room rent for June and July if necessary to Bianca—until my belongings are disposed of. I owe Dr. Harkness about $5.00 some small accounts at Gimble Bros. the Boston Store, Love Bros. Christoph's News Stand. My frock at Heller's is not paid for, $19.75 also a new suit, total $39.59. Probably they will take the suit back as it is if allowance is made for alterations. If they don't send it to Winifred. I have some cash on hand $27.00 or more—in my writing desk.—Grace"

Mr. Corrigan read a paper dated May 26, 1917 (typewritten). It was headed "Inventory Personal Property" and appeared to be a list of her belongings which consisted of a life insurance policy for $1000, a savings bank account of $500; money due her from the School Board, $250, books and pictures; picture post-cards, piano, silver spoons and jewelry, china and glass-ware and clothing; these were set out in detail and at the side of many of them was written in ink the names of the friends she wished them to go to. Likewise a will duly executed and witnessed, dated June 1, 1917, in which she directed that she be buried beside her mother and that $400 be spent for a monument, a bequest to her brothers and a female friend and the residue of her estate to her father.

Maurice S. Tullar. Am District Attorney of this County, but am not acting in this trial. The afternoon of the tragedy I made a search of the Mills' house. In a desk in Miss Lusk's room, I found some trinkets, letters from Dr. Roberts to her, a number of foreign picture post-cards and a letter from her to Mrs. Roberts.

Three or four days after I talked to her at the hospital. Mr. Steiner and Sheriff Morris were there too. Mr. Steiner had been asking her relative to a violation of federal statutes. She said she wanted Mr. Lockney there and either myself or the sheriff went to the phone and asked him to come up. I said How did you come to do this? Her reply was, I shot Mrs. Roberts for having called me such terrible names but I can't see how I did it so deliberately. Heard Mr. Steiner ask her if she realized at the time what she was doing; her answer was that it was a sane and open act of hers; that she realized what she was doing.

Later in the county jail I asked her if the offense of adultery had taken place in Waukesha county with Dr. Roberts. She said yes. I asked her if she would take the witness stand and tell all of the facts concerning her acts of adultery and if she would have her father sign the complaint charging Dr. Roberts with adultery. She said I will talk it over with my attorney, Mr. Lockney and I will let you know.

Cross-examined. She told me that she shot Mrs. Roberts because she called her such awful names, the second time she repeated it she used the word terrible; in response to Mr. Steiner's question she used the word obscene. I asked Dr. Davies before I went into the room as to her ability to see me and to talk to me and Dr. Davies told me it won't do any harm to talk to her.

Albert L. Morris. Am Sheriff of this County; a few days after the shooting I went to the hospital with the District Attorney and Mr. Steiner for the purpose of talking with Miss Lusk. Mr. Tullar asked her if she had shot Mrs. Roberts and she said that she had. He asked her why did you shoot her, and she said that she called me such awful names but what I can't understand is, how I could have done it so coolly and deliberately. I don't recall if Mr. Lockney was present

at the time; she was on a cot, apparently suffering pain, but she seemed cool and deliberate.

John Schaeffel. Am Coroner of this County; went to the the house about 2:40 the afternoon of the tragedy. Found blood stains two feet from where Mrs. Roberts was lying and also a small bloodstain near the telephone on the floor on the carpet. Did not notice any bloodstains upon the door-casing of the doorway.

Erick E. Keyser. Am an optician; remember selling these glasses to Mrs. Roberts.

Paul S. Kimball. Am clerk of the Municipal Court here; have made a special study of fire arms. Made an examination of the different bullets that were in the possession of the coroner and the different shells that were found, to find out whether or not they fit that gun. They do.

E. R. Estburg. Am a banker here; have made a study of handwriting; have examined the letter found in Miss Lusk's room and addressed to Mrs. Roberts. I am of opinion that it was written by Miss Lusk.

Mr. Corrigan read the letter.

"Dear Mrs. Roberts: It has been a desire with me for a long time to tell you frankly about the state of affairs between Dr. Roberts and myself. I have asked him repeatedly to tell you the whole story but you seem to have terrorized him to a pitiful degree. If I was to blame you for any one thing it would be for that. You must have known for many years that there did not exist between your husband and yourself a bond of honest confidence that is essential if the higher standards of marriage be upheld. You must have known for a long time that your husband's affections had passed from you—that he cared for some one else supremely. That is sufficient annulment of any marriage vow that was ever given. Had you gone to him and said frankly "If you do not care for me alone, take freedom—live your life in the way that will give you the most happiness and let me go my way"—if you had given him this opportunity of choice and he had said that he wanted you alone —then you would have given him the chance to play the part of an honest man. But you have not been fair. You have threatened him until rather than face certain results that he feared, he had lied and lied, played the hypocrite and coward until he has no moral fibre left. That is the way you so-called "Good," "Moral" women do things. In order to keep your reputations, to live lives —of ease (parasitic we term them now)—in order to do this, you make the other fellow do the sinning. If there really is an Omnipotent Judge somewhere I wonder how much of the blame he will fasten on you. When your husband first came to me it was for business or at least that was the excuse. But he did all the pursuing. I thought it was all quite a good joke, in fact it would never have occurred to me to take the situation seriously if one night, at the Baptist church—some supper or fair—you had not come up to us when we were talking in the most innocent fashion imaginable and rushed him away. You did not do it in a cour-

teous manner. I vowed thereupon to get even with you for your discourtesy. AND I HAVE, only I have hurt myself in doing so. Your husband assured me the first time that I ever talked with him that his home life was most unsatisfactory, that between you two after the first few months of married life there had been the most unsatisfactory relations as far as he was concerned. That there was not one vestige of love between you, that he felt he had been cheated—that you were a good housekeeper, but that he wanted something more. Later when we got to know one another better he told me that your sexual relations were the primary cause of all the trouble—that "she is as sterile as a mule." He felt that he had been cheated in the marriage game—tied to a passionless woman. I asked him why he did not ask for his freedom, that if you had any pride you would not wish to hold him under those circumstances. He said that you were so madly jealous that you would not do so—that you threatened to commit suicide at the slightest pretext. Rather than have things disagreeable he would lie. "Better to lie a little than to be unhappy much." He and I have always disagreed about one fundamental thing. I believed that we have done nothing wrong because we both have cared for one another more than for anyone else in the world. When a man and a woman care for one another like that—there can be no bond stronger in heaven and earth. I have begged him again and again to tell you honestly how matters stood. And always he is afraid. It is never the nature of the thing that is done that he minds, it is being discovered by you. With me I have felt that our only sin was the underhandedness of it all. Never in my life before have I done anything which even bordered on being unconventional—and this episode has almost killed me. You must understand if I had not cared supremely for the man—and have been sure that he cared for me only—I should never have done this thing. Every moment of the subterfuge has been galling. I hate to tell you how much your husband has cared for me. That seems most ungenerous. But I want you to realize that it has been a genuine "case." That he has given me presents indicates nothing. But there has not been a day for three years when—if we were not angry—he has not called me up by phone. Every Sunday morning at ten-thirty he has talked to me until he must have been chronically late to church. You have never gone out in the evening but what he has rushed over to his machine to be out with me. Every night, for instance last winter, when you went to those concerts at the Auditorium we were together. We have been to Chicago together at least once a month for three years. He came down to Peoria to see me last summer. When you were West he wrote me almost every day and was mad to be home (he said). Last winter when you insisted on accompanying him to the Stock show he tried to get you home by Friday. You threatened to kill yourself then, did you not? In spite of that he had to come down Friday and staid with me until midnight while nephew took you to the show. He

was over to me the next morning before nine. And he stayed until you almost missed the train. While you were sick last winter he was over with me every night. He made no secret of the fact that if you had been called to Angel-land that it would be a happy solution of the difficulty. In the Eternal Triangle the only solution of the problem is the elimination of the one character. The two who should remain are those whose affection is mutual. However this one thing may console you. If you have suffered pangs of that green-eyed monster, Jealousy, your husband has had his turn. He is crazy when I am out of town for more than two hours. Usually stands down on the Five Points and watches for my car to come in. He very effectually broke off any masculine friendships that I had out here. He was even so jealous of my being at the Bucks' that he would hardly speak if I went there to a meal. There is no use of my telling the details of our "case." I am sorry that it ever started. It has wrecked my life, brought sorrow to those who are dear to me. I have wondered often if you have really cared. It seemed to me that if you really loved your husband unselfishly you would want him to be happy, honorably, even if it were a sacrifice to you in some respects. It is not an unheard of thing for a husband or a wife to give up voluntarily the mate whose love had been lost. Did you ever hear the story of Ruskin—more recently of James K. Barrie? That seems to me an infinitely more dignified course than the one which you have pursued. Besides you are an active member of a religious cult whose leader said: "Greater love has no man than this—that a man lay down his life for his friends." You teach in Sunday School the beauty of a life that is unselfish. Yours is supremely selfish. You teach that it is a sin to make a fellow-man to fall; you have kept your husband in a bondage where he has lied, committed adultery, ruined the lives of innocent women, been a hypocrite. When I started this I did not mean to blame you—but I cannot help feeling rather bitter for the way in which your sanctimonious life, your selfishness has brought to me. Perhaps I can forgive you some time. Will you some time read Ellen Keyes' book, Love and Marriage? Then you will understand the modern woman's attitude on sexual morals. It is far removed from the stand that marriages are made in heaven. If some of them are made there it is because the angel who supplies the common sense has moved out. Shall I sign my name, It is"

THE WITNESSES FOR THE DEFENSE.

Prof. A. H. Schultz. Was principal of public schools in Stoughton prior to 1902. Miss Lusk was a pupil of mine; her character and conduct were excellent and she was unusually studious.

L. C. Currier. Am Clerk of City of Stoughton. Was at school with defendant there. She was known to all of us as a bright, intelligent student. Seemed to be rather more partial to the company of the young la-

dies than to the boys. Her feelings were easily hurt, she was easily moved to tears.

Walter Hintze. Was at school at Stoughton with Miss Lusk. She was a good student—playmates mostly girls of her own age. She was sensitive and inclined to be somewhat emotional.

Cameron W. Fraser. Knew defendant at Menominee Falls when she taught school there. She associated with the best people and her standing as a teacher was excellent.

Charles F. Henrici, S. P. Schlaefer, Carrie .Church, Dr. William B. Campbell, Mrs. C. W. Fraser, residents of Menominee Falls testified to the same effect.

Dr. T. W. Evans. Live in Madison; am a physician; knew defendant's father and mother for years. The senior Mrs. Lusk was a very nervous and melancholy person. When I was treating her sometimes when she was seriously ill she would have the house locked up so that I could not get in. Her husband Dr. Lusk, the dentist was very nervous and emotional in his work. Have seen him come from in front of his house, get down in front of my own and turn short around and go back and turn around and go back again and he would do that repeatedly.

Cross-examined. He practiced dentistry in Stoughton for many years; he is now 74, practicing his profession here.

Prof. Walter H. Cheever. Am a teacher in Milwaukee public schools; knew Miss Lusk when she attended the Normal School. She was an excellent student—a wide reader. I thought that she was working too hard. Her reputation for chastity was never called in question.

Mrs. Helen Stark. Knew defendant at Menominee Falls; she had very severe headaches; she seemed depressed and nervous—seemed irritable at times; knew her afterwards in Milwaukee. She suffered from severe headaches there too.

Mary D. Wolfe, Maud Schaeffer, Evalyn Calmerton and *Francis A. Blood,* testified to the same effect.

Robert Coe. Knew defendant when she was attending the Normal School at Whitewater. I was a student there; her reputation as a student was splendid. Her reputation for chastity was above reproach.

Grace Alvord and *Mrs. Jane Hale* testified to the same effect.

May 22.

Dr. Edward B. Owen. Was living with Dr. Lusk studying dentistry when defendant was born. There were a great many peculiarities about his mind. Sometimes he would be very nervous and he seemed to not know what he was doing some of the time; for instance, if he asked me a question he would ask the same question time and again. When he would leave the office I have known him to go back three different times to see if those doors were locked. Mrs. Lusk was subject to severe headaches and she would get very irritable.

Cross-examined. He had a good practice while I was with him and was regarded as a successful dentist.

Dr. Herbert H. Hanan. Am a dentist; defendant is my cousin; studied dentistry with her father; as to him there were

things that occurred every day that were out of the ordinary. He would come in and take off his hat, hang it on a nail, take it down, look into it, say "yes, yes, it is there" and hang it up again. He was very irritable at times and excited.

Louia Henika. Attended the University at Madison with defendant; we roomed together and graduated in 1912; she had very heavy work there—more than is usually accomplished by the average student in a school year. She suffered from headaches, perhaps once a week, once in two or three weeks or once in four weeks; they were irregular, they prostrated her. When convalescing from these attacks her face was drawn and she seemed tired and pale. She suffered from neuritis. She reached the stage where she did almost no writing and I wrote some of her letters for her.

Prof. C. F. Loomis, August Jacobson, Mrs. H. C. Rhodes, Mattie Walton and *Mary Anderson,* residents of Waukesha testified to her good work there in the schools and womens' clubs.

Myrtle E. Lull. Roomed at Miss Mills' house; saw defendant daily. She was very pale and nervous. She looked as though she had been through a long illness. Headaches averaged two or three times a month. She did so much reading that I never attempted to keep track of the books. Went to see her at the hospital the afternoon of the shooting. She said: "I don't see how I could have done such an awful thing, but I did not know I did it. She called me such awful, awful names." She was gasping a great deal at that time, it seemed an effort for her to breathe and she could only say a few words at a time.

Prior to the tragedy she seemed to be depressed a great deal of the time, didn't seem to be interested in things that she had been formerly—her mind seemed to be preoccupied. The day of this tragedy I ate dinner with her. She ate hurriedly and very little.

Mrs. Catherine Smith. Am a close friend of Miss Lusk; she visited me in Madison the spring of 1917. I felt that she was a little depressed, that she wasn't acting quite like herself at that time. She said that she was not well; she told me that she had not been sleeping and she could not use her hands to write with, she was very nervous.

Dr. Fred H. Berry. Am a dentist; was assistant to Dr. Lusk in Stoughton. He was what you might call a very erratic man; he seemed to have an idea that he had enemies; somebody that was trying to get him; he was continually on the alert for damages that might be done to him to the extent that he seemed to be always well armed and well on the alert for trouble. One of his peculiarities was that he never kept books but made all his little notations on clippings of paper, often tearing the white margin from the newspaper, then those were thrown onto a table which he called his desk. He never allowed me to have a key to enter or leave the office.

Dr. W. C. F. Witte. Am a surgeon in Milwaukee. Boarded in the same house there with Miss Lusk for over two years. Some-

times she would enter into the conversation of the topics of the day readily and pleasantly and at other times she would not talk to you at all. If you did not agree with her sometimes she would get very cross about it and become quiet and probably would not talk to you for two or three days and again she would be jovial and pleasant.

E. D. Main. My father owned the farm next to the Tipple farm. Knew Mary Tipple, wife of Dr. Lusk, went to the same school. She would have spells which you call St. Vitus' dance and she had nervous spells and she had whole terms when she would have to stay out of school.

Lovinia South. Knew David Tipple the father of Mrs. A. P. Lusk, also Louisa F. Bond, Mrs. Tipple's mother and great grand-mother of defendant, when I was a school girl. The latter was insane, in an asylum part of the time. All I knew about where she was when she was away was from hearsay.

Abbie Jones. Was making some traveling dresses for Miss Lusk on June 21; she came in about one that day to be fitted.

Cross-examined. At the time she left, each of us said good bye. She was talking to me about taking a trip to California. Did not notice anything different on the 21st of June about her than at any other time. Said she would come down next morning and we would talk it over.

Agnes Devereux testified to the same effect.

Mr. Lockney read a certified copy of the records of the Wisconsin State Hospital for the Insane as to the admission therein of Louisa F. Bond, November 4, 1864.

William B. Dawes (deposition admitted by consent). Knew Dr. A. P. Lusk in Stoughton. He was kind of a peculiar acting man. He never associated much with business men. (The witness told of occasions when he went back several times to lock a door.)

Dr. Arthur A. Brockway. Am an Osteopath. I bought this pistol for defendant. I had previously taught her how to shoot.

Margaret O'Malley. Used to work in a law office here; some time in May defendant told me she wanted to make her will. I drew it up for her. She said she would write a letter disposing of her chattels as she had so many friends she wanted to remember. This is not the same will I drew up.

Augusta Klinger. Am a teacher here. Saw defendant often at the Mills' house. She was suffering from neuritis when I first knew her and headaches. At first seemed very weak but later she got better, then about the last of the year she seemed different from what she had been both physically and mentally. She had periods of depression, a great deal of exaltation, then times of preoccupation, almost a loss of memory.

THE PRISONER'S STATEMENT.

Grace Alberta Lusk (sworn). I was born March 3, 1878, at Stoughton, Wis.; my father is Dr. A. P. Lusk. My mother died

in 1903; I went to school in Stoughton 10 years, then to the Whitewater Normal; in fall of 1896 went to Menominee Falls to teach, then to the Milwaukee Normal, graduating in 1900, then back to teach at the High School in Menominee Falls. It was at this time my headaches began to appear. Went home for the summer and then commenced teaching in Milwaukee, seven or eight years. Suffered from headaches all of the time that I was in Milwaukee. I would simply be prostrated and the pain was very, very intense. While teaching in Milwaukee I always was carrying on some study. I studied Latin with a private tutor. I studied French for two years and completed one course of University extension work in English and got about half way through with another. Went to Europe while I was teaching there twice. The first time I went over for the summer with a friend. The next year I received the appointment from the Mosley Commission to visit European schools, to inspect and report upon the school system in England and Scotland, and Holland. I left in April and got back before the opening of school in September. I taught until June, 1911, when I was given leave of absence. Went to the University of Wisconsin the next year for my bachelor's degree; bachelor of philosophy. I was there but one year but I had done some work at the University of Chicago in the summer time and I had spent two summers at the University of Wisconsin.

In Milwaukee for two years I had charge of the Boys' club down in the Jewish settlement. While attending the University in 1911 and 12, I had this severe attack of neuritis. I used my left hand to write with until I lost the use of that about five or six weeks afterwards. I wanted to go back to the University the next year for my master's degree—the physicians said that I was not able to go. Then I came to Waukesha to spend a couple of weeks with Miss Mills the last day of August 1912. My purpose in remaining in Waukesha during 1912 and 13 was to get strong enough to go back to teaching.

Was treated by several physicians during that time and at the end of 1913 had recovered in a measure. In the fall of 1914 I entered the Waukesha schools for the first time as a regular school teacher. The high school was overcrowded and I was given a room in the Y. M. C. A. building. During the interim between leaving the University in June 1912 to the beginning of my first term in Waukesha I was under strict orders not to do any studying.

I first met Dr. Roberts at the home of Mr. S. B. Mills, a brother of Miss Bianica, at a party there about Feb. 1, 1913. We got into conversation. I told him I substituted for three weeks over in the high school for one of the teachers who was absent and I had to teach agriculture and as I had no preparation I had to do considerable studying. The impression came to me that I might get some information from him. He picked up a book that was there that he had gotten out and which contained a number of pictures of cattle and showed it to me and said that if I wished a copy of that book he would be very glad to give it to me, which he did later.

May 23.

Our next meeting was when he came to the Mills' house with his auto and took several of us for a ride. I sat with him. Jokingly he said that his wife was away, he was for once in his life having a chance to take out people that he liked. Asked me why I was not married. A little later he took us out again. He said then that he was going to drive to Minneapolis because his wife was there and he was going to bring her back and he wished that some of us would go up with him. I said I would like to go up if a party was going up because I had friends in St. Paul. Some time after that he telephoned if I would call at his office that he might consult with me about a text book that he thought of getting out. I said I had had no training along that line but if I could be of any assistance I would be very glad to do it; asked him to come to my office at the Y. M. C. A. building.

He came shortly after, showed me a book on cattle and said he was going to get one out like it. I told him I thought there would be a good field for a book of the kind, the very thing that would be going on the supplementary shelves in the rural school. He said if I would help him he would bring over the manuscript he had and let me look at it. That was in Nov. 1914. In about a week he brought over part of it typewritten for me to look over. I made a suggestion that it would be an excellent thing to put in colored plates because of my experience at that time when I was trying to teach about cattle and did not know anything of them. He asked me how I liked Waukesha and I said that I had never had any work that I found so interesting but I did not have the pleasant social life I had in Milwaukee and Madison. Where I was staying they objected to card-playing; Miss Mills wasn't very fond of good times, so I was a little lonely. I missed the jovial crowd in Milwaukee; he said he could appreciate what that meant. He did not have much liberty as to bringing any of his friends home; his wife objected to his enjoying himself the way that he would like to.

I looked over the mss., made some corrections and suggestions; its English and punctuation were very bad. Then he revised it and sent it to me. Just before Christmas I told him of a Christmas tree I had got up for the children. He said that he wished that he had children in his home, because then Christmas would be happier there than it would otherwise. Christmas eve he telephoned to the house that he was going out to his farm in his automobile to take some presents out there and asked me if I would like to ride out with him, that his wife was at the entertainment at the Baptist church and he hated to go out alone. I was a little lonely and I said I would go with him. On our ride we talked about giving Christmas gifts: I said that for the first time I had stopped giving gifts to any but my personal friends. He said he thought promiscuous gift making was rather foolish. He said he enjoyed giving gifts to his employes; he was glad he was so prosperous and able to do so much for others. I said it must be very nice to be

prosperous, that I never experienced that state. He said that if he did have money he didn't have all the things that a man usually cared for; that his home was not happy because it was a home where there was no affection.

During January and February he came to my office very often about the book and other work I was doing for him. I recast several of his magazine articles. Now there was a decided change in both of our attitudes. We started in simply as acquaintances and a decided friendship had sprung up between us. His wife was mentioned several times. He said they were not especially congenial and that after a short period of married life they had discovered that they had little in common and that they had been getting along as best they could on that basis. In these months we went riding in the country very often. One day early in March I was seated at my desk looking at some of this manuscript and he leaned over and kissed me. I stood up and I said he ought not to do that and then I think we kissed each other. He said that he had come to care for me. I told him that he must remember that he was married. He said again that there was no love in their home and that his wife did not care for him and he did not care for her.

One evening in his office he said that the first time he saw me he had been attracted by me and he wished that he could know me well; that I was quiet and well bred and had nice sort of friends and that was the sort of woman that he admired; that he did not like sporty women. Then he said he wished I would study stenography so that he could have me for his private secretary. I said that would be rather foolish sort of thing for me to do with my rather expensive education to give that up and go back and take up another trade. I asked him jokingly how much he paid his stenographer, he said something about fifty dollars and I said don't you know that I am getting $100 now a month? I said it would be a poor money proposition for me and we rather joked about that sort of thing.

During this time we rode out together a great deal and talked over the phone every day. He told me on a number of occasions that in their home life there was no happiness, there was no love on the part of either of them, that it had been a great grief to him that there were no children, because he was exceedingly fond of them. That his wife did not care for children.

It was then I began to love him. He said that he would like to be free but he could not be such in the eyes of the law. My wife is a model wife and I would have no grounds to ask for my freedom. The first week in May I was going down to Chicago to visit a friend and he said that he was going down at the same time and suggested that he meet me there. We could talk together and be together and that would be all. The rest would depend upon me. I met him in the parlor of the Hotel Sherman. He said he was staying at the Grand Pacific and he asked me to go there and take a room; that he had some of the manuscript with him, we could look it over in the evening. I went over to the Grand

Pacific in the afternoon and registered and he came into the room between 4 and 5. We went to dinner at the Boston Oyster House and then back to my room. He told me that he cared for me a great deal, kissed me a great many times—he left about ten or eleven.

I paid my own railroad fare and hotel bill; he offered me money which I refused. After we got home he bought a new car, especially for me he said. He was constantly telling me he had no love for his wife and that I was the type of woman he cared for. I said that I could never consent until I was sure that I loved him and until he could tell me that I was the only one he cared for. He told me I was the only woman in the world that he loved, that all of his love was for me and for me alone. I spent the summer at St. Paul and other places with friends. On the way I met Dr. Roberts in Milwaukee and together we went down to Chicago on the same train.

We wrote often but I have destroyed his letters. I had promised him that I would destroy every letter that he wrote me. He had promised me that he would do the same with my letters. He paid my expenses to St. Paul. I met him at Chicago on my way home at my room at the Grand Pacific. After I got home he gave me money frequently and told me what he wanted me to get. I bought a wrist watch. He told me that he would like to get jewelry but I did not care very much for jewelry so I never got it.

After school opened in September, 1915, we rode out together a good deal and took trips to Chicago about once a month. I always used my own name except the latter two or three times when we would register together, then he did the registering.

He was away on business trips as far as Seattle once on my Chicago trips; the first two times that I went down I paid my own expenses. I would not accept any money from him at all. After that he always gave me money with the understanding that it was to pay my railroad fare and pay my hotel bills and if I went out for any extra shopping.

In the summer of 1916 I gave a course at the Bradley School in Peoria. From there went to Chicago where I met Dr. Roberts. I was on my way with a girl friend to Canada. I needed the rest and he said I could stay some place near by and rest. He did not want me to go so far away. I went with my friend Miss Edwards to Toronto and the Muskoka Lakes; returned home the latter part of August; a week later the Doctor and I went to Chicago to the Hotel Sherman. He was very cross and jealous and scolded me for being away so long. He would always ask me to tell everything that I had done while I was away from home, with whom I had lunch and when I went shopping, where I went, if I went out to dinner at the home of any of my friends I had to give the personnel of the party. If there were any men in the party there was a disagreeable time.

During the year 1916 he talked a great deal about separating from his wife. He said that he did not think that the situation

was right, because in their home there was no affection and between myself and himself there was so much that he felt it would be better to be honest about things. Later I recalled that conversation to him because the situation was becoming intolerable and he said that some time the situation would work out differently. One time Dr. Roberts and I had planned to go out in the evening. He called me up and said he would not be able to go that evening because they had been invited to a party and he would have to go and I said I did not want him to go if he could not take me. He did not go. I told him that if he went that I should write to Mrs. Roberts and tell her the situation.

In February 1917 we went to Chicago for two days, stopped at the Hotel Morrison; again in March to the Hotel Brevoort and in April to Milwaukee, the Hotel Wisconsin, where we stayed all night. I don't recall any other meeting until the one at the County Line. I asked him if he had been telling me the truth about their not caring for one another; instead of answering me frankly he avoided the subject. I said the situation had become unbearable, that if Mrs. Roberts was so unhappy and I was so unhappy something would have to be done to relieve the situation; that if he did not care for me, if it was I who was the superfluous one, if he told me this that would be the end of it and he said that he cared for me just as much as he ever did. I said you must tell Mrs. Roberts because this situation cannot go on any longer. It is unfair to both of us. If she understood the situation she would be perfectly fair about it. I also asked him finally what he would do. He said he had some plan if I would only wait. I asked him what it was and he said that he could not explain it to me. Finally I said you must promise me this one thing, that you will go home and tell this situation to Mrs. Roberts so that it can be cleared up. He said it was impossible for him to do so. I think it was then that I struck him. I did not see him for quite a long while after that. I did not call him up and neither did he call me up for some time.

After the County Line meeting I begun to feel that he was not meeting the situation as I understood he would. It affected my whole mental outlook. I never slept at night it seemed after that.

We had another meeting at the Hotel Wisconsin about June 1st. He told me that he was going East and I asked him if he would meet me the next day at the hotel Wisconsin because I had some things I wanted to say to him. After supper he went down to change the parking of his car and I took a letter that I had in my pocket that I had written to Mrs. Roberts and I went out into the hall and dropped it into the mail chute. Then I came back into the room and I took my revolver which I had in my bag and I put it into the drawer of the writing desk. I had decided that this situation had to be straightened up and if Dr. Roberts did not care for me and was not ready to be fair and straightforward with both of us women that I would take my life. When he came back I told him I never would have allowed this thing to start if he had not assured me that Mrs. Roberts did not care for him and he did not

care for her. I had been compromised hopelessly. My reputation was gone, my life was marred because I had always been straightforward before. I said that if this had been a game on his part and I had been so simple as not to understand him that I could face the consequences and he took me in his arms and assured me that if at the beginning of this affair he cared for me, he now cared for me ten thousand times as much and if I would only wait everything would come out all right; but I said it could not go on any longer, and I asked him if he would not go home and tell the whole story to his wife, Mrs. Roberts. He said it was impossible. I took out the revolver, told him to step back that I was in earnest about this, that his game had gone far enough. I told him to place his left hand on the bible and raise his other hand and swear that he would go home that night and tell Mrs. Roberts the truth and he said I can't tell it now because I am on the eve of this business trip. I said that I would give him until the 15th of June to do this and he said that he would do it before then. I said I want you to ask her for your freedom and he said, "Do you think that will help things if I tell her first?" and I said "I want you to arrange this so that we are all going to understand each other" and he promised me that he would do this. I went over to him and I put my arms around his neck and I said that he did not need to do it unless he wanted to and he said "yes it is better to be honest about the whole affair." Then I told him about this letter that I had mailed to Mrs. Roberts and told him to intercept it in the morning.

Just after the County Line meeting I made my will. I realized for the first time that Dr. Roberts and I had had this love affair with entirely different points of view. I had been sincere, I had given to him the things that a woman gives to a man that she loves and on Dr. Roberts' part it was a game. I had lost my reputation and with it went my usefulness and I did not want to live any longer. There was no place in the world for me. After he went away a dear letter came from a friend in California, urging me to come at any time and spend the summer. I thought if I could be with her I could gain my poise and find an opening where I could teach and get away from this environment and everything would come out all right. After that in talking to the Doctor he was so sincere and earnest that I wanted to have another talk with him when I could determine definitely what his attitude was. That was why I requested that meeting at the hotel Wisconsin and that was why I went prepared for either thing that might happen.

After his promise in Milwaukee, I determined to live; to go to California, to get into new environments and to get back into a cheerful state of mind. I had made my reservation on the train for the Tuesday after the tragedy. At the Hotel Wisconsin he had told me that he was going away but would be back by the 20th of June. He did not return until the 21st. That evening I called up the office and asked him if he had kept his promise and told Mrs. Roberts those things which he promised to tell her in Milwaukee

and he said no. I said that I wanted to see him that night and he said he could not see me the next day, he was too busy. I said he would have to or I would see that some steps were taken and that I would ask Mr. Lockney about it, what he could do for me and he said do you know what it means to make a threat over the phone and I hung up the receiver.

Then I went over to his house. He came to the door. I asked him when he was going to tell his wife and he said, what do you expect to gain by this Miss Lusk? I said Miss Lusk and he said Grace. Then Mrs. Roberts stepped out and she said was that you that called up on the telephone this evening? and I said yes. She said I thought I recognized your voice. Won't you come in? and I said no, I just want to speak to Dr. Roberts for a moment. I asked him to walk over home with me, so he went in and got his hat and we started home together. While walking towards home he asked me Have you your gun with you? and I said, no. He said, Have you destroyed the letters which I gave you and I said that I had. I lied to him because I had kept two or three. Then I asked him why he had not written to me while he was away, because he always had before and he said because I have not felt sure that you were destroying my letters. I assured him that I had. I lied to him twice. I said if you do not care for me if you will say so now this will be the end of it; he said he loved me. Then I said if you do love me you have got to be honest about this, you must go home tonight and you must tell Mrs. Roberts and you must ask her for your freedom because the whole situation is so wrong and he said that he would do so. Then I asked him to kiss me. He said I can't kiss you, my mouth feels as if it were full of poison, but he did and then he went home.

When I got home Mrs. Roberts called me up; said she wanted to see me next day, and next morning she asked if she should come to my house and I replied I would prefer my office, but she did not come though I saw her with her husband in the hall. I went home at noon and wrote that letter to her. After dinner I went to the dressmaker's. When I returned I called up Dr. Roberts and asked him if he had told Mrs. Roberts what he had agreed to tell her the night before and he said, yes. Then I said "What did she say?" He said "Well, she said a great many things." Just at this point the door opened and Mrs. Roberts came in. Mrs. Roberts said "I have come to get an explanation of your conduct last night. I think it was the most asinine performance I ever heard of. My husband said that you were the damnedest fool that he had ever known. You have chased him until he has not known what to do with himself." Then she commenced to abuse me and she ridiculed my personal appearance. She said she did not think much of his taste in picking out a scrawny old maid. Then she commenced ridiculing my friends.

Then she asked me if I had been intimate with Dr. Roberts. I said that was a question that she would have to ask her husband.

Then she said that I would have to get out of town, that she could go to the school-board and tell them about me and I would have to leave. I said you must not do that Mrs. Roberts because I have to earn my living. She said well, my friends will put you out of town, they will tar and feather you. I said what will they do to Dr. Roberts? She said that is a different matter. Then she said, I suppose the trouble with you is that you are in a family way and we will have to deal with that. She said don't you know how, she mentioned the name of a young woman we both knew, don't you know how this young woman died? I said, no, I did not know about her, and she said, Well, she died in the third story in a little room of a second class boarding-house as the result of an abortion after she had been too friendly with my husband. You will die that way too, but it won't be in Waukesha. Then she said Dr. Roberts never cared for you, he has just been making sport of you the way he has with other women. I said he has really cared for me. She said have you anything to prove that he has cared for you? I said I have some letters upstairs. I went upstairs for his letters intending then to kill myself. I brought them and my revolver down; she said she could not read them as she did not have her glasses, but when she saw his typewritten itinerary in one of them she said he must come and explain this. She went to the phone and said to her husband "I want you to come up immediately to Miss Mills' residence and hung up the receiver. Then she hurled some and said some obscene things and then I don't remember what happened after that.

I intended to kill myself, I never had a thought of taking her life never, never, never! The next I remember was being in my room. I recall writing something and trying to get the revolver to work; don't remember shooting myself. Then remember talking to Dr. Davis at the head of the stairs. I would not let him come up because I wanted to die. I asked him if my wound was fatal and to write some messages for me. I asked him to go away two or three times so that I could shoot myself. I tried and then my nerves would leave me, then I would have to try again. Finally I did put the second bullet through my body. The men came upstairs. I thought that I was dying and they carried me away. That first day and first night I wanted to die but my father came and he wanted me to live.

The last things I remember Mrs. Roberts saying to me were that I was nothing but an old bitch, running around town looking for a bull dog; that I was a low-lived whore.

CROSS EXAMINATION BY MR. CORRIGAN.

Miss Lusk. I did not shoot Mrs. Roberts because I was angry or because she called me names; I wrote this letter to Miss Winans the morning of the tragedy but did not mail it.

Mr. Corrigan read the letter (extracts):

"I received a letter from 'tother Winifred,' who is very urgent about my going to California. Father does not seem very enthusiastic about my going. He thinks I had better go where I can rest and rest and rest. Also he thinks I am pretty much of a spender. Of course you have bought Lib. bonds. I am also supporting a Belgian orphan and assisting on a French one. Am holding my breath for Red-cross week. I am not in a mood to write a decent letter. I feel like a lone, lorn lil puppy that wants some one to pet it and whom he could fuss joyfully over. Take care of yourself my dear girl, be happy in your garden but don't take it too seriously. Give my regards to Mabel and here are heaps for you. Affectionately, Grace."

This letter to Miss Edwards I wrote a week before but had not mailed either.

Mr. Corrigan read it (extracts):

"Dear Ida: When I try to do real stylish typewriting the very devil itself gets into my machine. Otherwise my work is perfect. Anyway I feel that I need a rest. Aren't exams the evil one's own invention.

What do you suppose my latest bug is? Nothing less than a trip to California, main objective point, Santa Barbara, where my Winifred lives at. I am not going to take a fancy tour—just out there and back. This plan is subject to amendments maybe to annihilation but it is the latest thing in plans. I am so thankful that I am not going to teach this summer. I am so tired now that the thought of work is not pleasing in my sight. Next week I am going to give my clothes the 'once over,' see the dentist man and SLEEP, SLEEP, SLEEP. Gee, I feel like taking a regular R. V. W. nap. We had a ——— of a thunder storm last night, every one sat up to see it through. Consequently many sleepy heads today. I am going to buy a Liberty Bond. I may have to sell it by Fall. But I hope not. Then too I am going to adopt a Belgian baby. They cost a dollar a month. I would take a French one but they come higher."

I enclosed my letters to Dr. Roberts in ones to Miss Blodgett because he told me to do that always; for the purpose of secrecy so that our relations could be carried on without discovery.

I wanted Dr. Roberts to tell his wife of our relations so that she could step out if she desired to. If she did not care for him and he did not care for her that seemed the logical conclusion. She had never listened when he tried to explain to her what the situation was, according to the stories that he had told me. As soon as he would try to explain she would lose her temper and frighten him and I thought if he stood firm and told her the whole story that she could be reasonable because I thought that she did not care for him. I thought if she had made her decision the thing would be settled if she saw the thing as it was and she wanted to continue it, then I would step out; things could not go on as it was for any longer.

At the Wisconsin Hotel I had mailed my letter to his wife before he went out to park his car. I wrote it here.

Mr. Corrigan here questioned the prisoner very closely as to the meaning of expressions in her letters to Mrs. Roberts. Among the explanations she made are the following:

Miss Lusk. When I wrote "With me I have always felt that our only sin was the underhandedness of it all" I meant that the sin was not in having the relations with the doctor but in not making the fact known to the wife, the whole situation clear and clean.

When I wrote "that is the way you so-called good, moral women do things" I meant women who had been facing the issues of life squarely and frankly.

When I wrote "parasitic" I meant women who live lives of ease and who have done nothing for society—the so-called good moral women, whose morals is more of the negative sort. In this one respect she was taking her place in that class. I was using the word as it is used in sociology today, and not in the biological sense. It means one who has not been productive to the good of society—a hanger-on.

When I wrote "I am asking then why he does not ask you for his freedom" I wanted him to tell her the situation; freedom from the marriage relation might result from that. If they did not care for one another it would make the way open for all three of us, and a subsequent marriage between me and the doctor, if that was what the doctor and his wife agreed upon; the choice was to be between them. I meant by the Eternal Triangle that there were three parties to it.

May 25.

When I drew the pistol on him at the Hotel I did not intend to shoot him for I knew he would promise what I asked.

This is the review I wrote of Helen Keyes' book on Love and Marriage. Yes, I said in that review: "But the frankness and dignity of her love and marriage has made it one of the epoch-making books of this generation." "We feel that we are in the inspiring presence of a woman whose personality is one of the chief moral forces of our time. The first chapter in her book deals with the development of sexual morality. She traces the development of monogamy and shows how under ideal circumstances it is an ideal solution of the problem." This is Ellen Keyes' book and I am giving a summary of it and what she did are not my opinions and I refuse to have this all attributed to me. Ellen Keyes is a much greater woman than I.

Yes I wrote: "I again and again contend that real fidelity can only exist when love and marriage become equivalent terms. The chapter on the evolution of love is rather stimulated. But when sensuousness—in alliance with the mission of the race—regains its ancient dignity then the power of giving erotic rapture will not be the monopoly of him who is inhuman in his love. The wise virgins' deadly sin against love is that they disdained to learn of

the foolish ones the secret of fascination; that they would know none of the thousand things that bind a man's senses or lay hold on his soul; that they regarded the power to please as equivalent to the power to betray. When all women who can love are also able to make goodness fascinating and completeness of personality intoxicating, then Imogen will conquer Cleopatra."

The thesis of love's freedom is contained in this extract: "When two lovers have that desire and have reached that maturity, when the will has a right to realization and is in full agreement with the health and beauty of themselves of the new generation and of society it is right that they should come together even though it may not be possible for their pure desire of common life and common work to take the form of marriage." Probably one of the most discussed passages in the book is this. The ideas promulgated in the chapter on free divorce are going to shock you especially if you are ultra unconventional and stereotyped in your thought. But remember that Ellen Keye's articles in the Atlantic Monthly, Harpers and the leading European periodicals are eagerly sought —not for their sensationalism—her name is not even known by the masses, but because she has something worth the saying—she is an extremist? Perhaps so, but she hates hypocricy and cant; she can't tolerate a hidden sin. Our old morality which condoned conditions that every one knows to exist, men unfaithful to their wives, wives unfaithful to their husbands—providing these affairs can be comfortably quiet. The new morality faces things frankly. It doesn't call all flowers blue because blue is a nice color."

Mr. Clancy. Would you like to explain the writing of that review?

Yes. A friend told me she had to write a review of Ellen Keye's book, "Love and Marriage," and she says, "I have read it and read it and I can't make head or tail out of it and I am too busy to spend any more time on it." I said, "If you want me to I will see what I can do with it." So I took the book and went through some parts of it. I did not read it all but gave in a condensed form the things that I thought Ellen Key was trying to put forth.

Dr. A. P. Lusk. Am 65. My wife, on our wedding trip at Niagara Falls in 1874 suddenly became insane and tried to jump into the river. I grabbed her just in time. A casual remark of mine which I do not recall was the cause.

Dr. Herbert W. Powers. Am a graduate of the Medical Department of the University of Illinois; have practiced 16 years in Chicago and Milwaukee; have had much experience in mental and nervous diseases.

Mr. Clancy here read an hypothetical case embracing what had been testified to by the witness; also including the letters and other evidence which was listened to by the different physicians in the court room. The "case" was agreed to by counsel on both sides. It is in a condensed form found in the Narrative, ante p. 316.

Mr. Clancy. Assuming these facts to be true was Grace Lusk in your opinion of sufficient mental capacity to know the difference between right and wrong? *Dr. Powers.* She was not. She was suffering from a form of mental disease of such an extent and to such a degree as to produce insanity. I think she was suffering from a disease known as parenoia. (The witness gave his reasons at length.)

May 27.

Mr. Clancy. From the evidence as to her ancestors do you think her condition was hereditary? Yes.

Cross-examined. In giving my opinion I assumed that Miss Lusk was unconscious at the time. People may suffer from headaches and from neuritis and yet be sane.

Mr. Corrigan. In view of the answers of this last witness, the state moves for an inquisition at this time of the present sanity or insanity of the defendant under the statute.

THE COURT. Well, gentlemen of the jury you will please step into the other room. (The jury retires to the juryroom.)

THE COURT. The application is denied. I am not convinced that the mental condition of the defendant now is such or has been such, that she is not able to proceed with the trial.

Dr. William F. Becker. I heard the hypothetical case read. Am a graduate of Columbia Medical College; have practiced since 1882 in Milwaukee and for 25 years have devoted myself to nervous and mental diseases; my opinion accords with that of Dr. Powers. (The witness gives his reasons at length.)

Cross-examined. My opinion is not altered by what she told the witnesses at the hospital.

Dr. George S. Love. Am a graduate of North-western University Medical College; have practiced here since 1894; am a general practitioner; heard the hypothetical case and agree with Dr. Powers.

Cross-examined. The use of epithets and bad names often produce anger on the part of the person to whom they are addressed, and cause and induce notions for revenge to arise in perfectly sane persons. If she was conscious at the time of the shooting of Mrs. Roberts and remembers afterwards and remembers now I would say that she was responsible.

Dr. Grove Harkness. Have practiced here for 21 years and have treated many cases of mental disease; heard the hypothetical case; agree in my opinion as to the defendant's state of mind with Dr. Powers.

Dr. George E. Peterson testified to the same effect.

IN REBUTTAL.

Dr. Roberts (recalled). I never at any time said anything disrespectful concerning my wife to Miss Lusk; nor did I ever tell her I would divorce her or that our relations were unpleasant.

Dr. Frank C. Studley. Am a

graduate of Columbia Medical College; have practiced for 25 years, and am the proprietor of a Sanitarium for mental diseases in Milwaukee.

Mr. Corrigan read the State hypothetical case founded on the evidence adduced on the trial. (See narrative p. 316).

Dr. Studley. Assuming these facts to be true my opinion is that Miss Lusk was of sufficient mental capacity at the time of the tragedy to know the difference between right and wrong. She was not suffering from paranoia; have had cases of paranoia, a very wide experience. A disposition to commit suicide is rather uncommon, the homicidal impulses but not the suicidal.

Cross-examined. Dr. Lusk's actions as described are significant of nervous instability—that he was therefore insane, I would say, no, I should say that his mind was free from disease but not from peculiarities and oddities. The act of suicide is perfectly consistent with a sound mind and it is frequently a very sane act; it is widely within the limits of the normal action of the mind, but not by any manner of means does a person who commits suicide suffer from insanity at the time of the act. As a general proposition suicide on the part of a sane person is vastly more infrequent than its occurrence in the insane. It is frequently the case that the insane will have descendants who are perfectly sane. I would conclude in the presence of such a person that the ancestry had a very strong bearing upon the production of this condition if he or she were insane but I would not expect that insane ancestry necessarily are going to produce insanity in the children or grandchildren. The type of headache that she described was not that of migraine and that is one form of headache that I would state as of degenerate origin. The headaches she was describing here, where she spoke of the pain up over her eyes and at the back of her head, taken in addition to the fact that she wears glasses, impresses me as more likely that they were due to astigmatism or some trouble with the eyes which the eyeglasses corrected.

Dr. William F. Wegge. Have practiced in Milwaukee since 1886; have had experience in insanity cases, heard the hypothetical case read. I think Miss Lusk had the capacity of distinguishing between right and wrong at the time. She was not suffering at that time from paranoia. The disposition to commit suicide does not often accompany paranoia. The tendency is towards homicide. It is not accompanied by trancelike stages.

THE SPEECHES TO THE JURY.

MR. TULLAR FOR THE STATE.

May 28.

Mr. Tullar. Gentlemen: The functions of the government are the lawmaking bodies and the judicial bodies, so far as we

need to consider govermental functions in this case. The laws upon our statute books, are the laws to be considered in this case. In the grand old state of Wisconsin we have the best laws for the enforcement of rights and duties that there are in the world today.

You gentlemen are a part of the government. The jury sitting here as the judges of the facts in this case, together with His Honor on the bench, and the prosecuting attorneys presenting the facts, constitute the government officials in the trial of this case. We stand together, sworn to do our whole duty, and to be fair and just in the prosecution of this case. You have each sworn to do your full duty in this case, and to be fair and upright in the performance of that duty. We know you will do that, gentlemen. That His Honor on the bench has sworn to do, and the prosecuting attorney has sworn to do, and we are all here to do our complete duty so far as we know it, and to do right and justice, and to be fair toward the actors in this case—not only fair, gentlemen of the jury, to Grace Lusk, but fair to the state of Wisconsin and to the people of the state we all represent here. That is the idea of fairness and of justice which we all accept as proper and right in this case.

The laws that we have to apply in this case are what are known as written laws. His Honor will give you those laws, which are to govern you in your decision upon the facts. You are the sole judges of the facts in this case, and your verdict cannot be gainsaid by any person, but you are to take the law from the Court and not from the attorneys. These written laws have come down to us from a very ancient time. The first written laws that we have any knowledge of were the God-given laws to Moses on Mt. Sinai when he recorded upon the tablet of stone the laws which were given him by the Great Jehovah; and the peculiar thing occurs here that two of those laws at least—are involved in the consideration of this case. They are still upon our statute books in modern style and form, comporting with the improved conditions of our age; and are as follows:

"Thou shalt not covet thy neighbor's house." And "Thou shalt not kill."

Those Commandments which have been recognized from the time of the earliest civilization are still Commandments, are still the written laws of this state.

The information charges as follows: That on the 21st day of June 1917, Grace Lusk did wilfully, feloniously and of her malice aforethought kill and murder Mary Newman Roberts.

To this charge the defendant has entered a plea of Not Guilty, together with a plea that she was insane at the time she committed the offense. There we have the issues in this case, which are to be determined by your verdict.

It is incumbent upon the state to prove all the facts that it alleges in this Information to your satisfaction and beyond a reasonable doubt. One thing charged in that Information is the killing of Mary Newman Roberts. That fact has been established over and over by the witnesses for the prosecution. With what intent did she kill her, is the only question that is left in this case. *Intent* is something intangible that exists in the mind and can only be brought to the attention of the Court and the jury by the acts themselves. By proof of the acts we are to establish, and ascertain what the intent was. Grace Lusk has testified here before you that she was not angry when she killed Mary Newman Roberts. It was not done in the heat of passion. But she said she was unconscious at the time, and that brings us to the only issue that you will have any trouble with at all, and I do not believe you will have much trouble with that when you have heard the instructions of the Court on the question of whether or not she was insane, whether she was capable of distinguishing between right and wrong at the time she shot and killed Mary Newman Roberts.

The Court will instruct you, that there is a presumption in law that Grace Lusk was sane at the time. That can only be overcome by proof which satisfies you of her insanity, or

at least raises a reasonable doubt in your minds as to whether she is sane or insane.

Grace Lusk shot twice. The State contends it was the last shot that killed Mary Newman Roberts. The second shot establishes the fact that she intended to kill her. The first shot was given near where the telephone stand is, where Mrs. Roberts had just telephoned to her husband. There blood was found upon the floor. Mrs. Roberts retreated from that place about twenty to twenty-five feet over into the corner where her body lay. She undoubtedly staggered against that casing of the wide folding door, and left a large bloodstain upon the door jamb, as testified in the evidence and as shown by photographs. The first shot, as we claim, entering between the seventh and eighth ribs and lodged below the scapula or shoulder blade, was a fatal shot, passing through the different organs, as the doctors have described to you, but not immediately fatal. But the second shot, as we claim, and as I think this testimony shows beyond any reasonable doubt, was fatal. Grace Lusk pursued and kept shooting Mrs. Roberts until she fell. That shows the intent with which she made that attack upon Mrs. Roberts. It shows that she intended to kill her. The Court will instruct you that that intent to kill need not necessarily exist for any considerable length of time before the act itself is committed. Momentary intent is sufficient.

Mrs. Roberts came to that house to see Grace Lusk. She wanted to find out about the rumor; about what had been going on between Grace Lusk and her husband. Who had a better right to investigate that than Mary Newman Roberts? It is claimed that because of the language which she used toward Grace Lusk on that occasion, she became unconscious and killed her. I haven't any doubt that Mrs. Roberts said some plain, scorching things to Grace Lusk. Grace Lusk had all this coming to her, and she got perhaps a part of what she deserved at the hands of Mrs. Roberts. I think Mrs. Roberts was capable of telling facts in a plain and unmistakable manner; and I think perhaps she did it on this occasion.

His Honor will instruct you, as I believe, that no amount of personal language, no amount of language or abuse used by Mrs. Roberts toward Grace Lusk would excuse or justify her in shooting her. It is a familiar principle of law that you cannot repel what we call a verbal assault by actual assault. A man cannot enforce the law in his own case.

I have seen some good actresses in my time; but I have never seen Maud Adams or anyone else equal that which I have seen in this court room during this trial. Ten months only of preparation for it, but Grace Lusk is perfect. She tells you that she went upstairs to get some of Dr. Roberts' letters to show Mrs. Roberts to establish to her that Dr. Roberts had been untrue to her; that she got those letters and took them downstairs to Mrs. Roberts; that in doing so she saw her pistol which she slipped into her dress pocket for the purpose, as she said, of taking her own life. Now, that sounds well, but let us see if the cicumstances bear out its truth. Previous to the shooting, she went upstairs and got that pistol. While she was upstairs, Mrs. Roberts called up her husband and asked him to come over to the Mills' house, and was still at the telephone when Grace Lusk appeared. Did she bring down Dr. Roberts' letters? No, gentlemen of the jury. It is in evidence here before you from the district attorney himself that he found those identical letters written by Dr. Roberts, in the bottom of a drawer, covered over with pencils, keys and other drawer bric-a-brac, accumulations of time, which had covered over these letters from the time they were deposited there. There was no blood upon them. They were in the envelopes, as they were offered in court here, and found by the district attorney. Consequently, Grace Lusk did not take those letters when she went down to Mrs. Roberts with the gun in her hand. Those letters were in that drawer where they had been for weeks, and perhaps months, untouched and unopened. Then why did she go upstairs? She didn't take anything else down but the gun. That she had concealed in her pocket. There is no question about her

taking the gun. Did she know, when she went upstairs, that she was going to shoot that gun?

The court will instruct you, gentlemen, that in considering the testimony given by the different witnesses upon this stand, you must take into consideration the interest, if any, they have, or either of them have, in this case. Grace Lusk is more interested than any person in this case at this time, and her interest is such, with her life and her freedom at stake, that cannot be measured by any other interest or any other factor in this entire case. She is more than interested.

She went downstairs with that gun for a purpose; and she put that purpose into effect. Mrs. Roberts had not as yet left the telephone. She was shot the first time by Grace Lusk upon coming down those stairs. One cartridge, an exploded cartridge, was found on the centertable in that room, she had to pass that centertable. And we all know the operation of an automatic pistol; it ejects the cartridges at the time of the explosion or reloading. One cartridge was upon the centertable that Grace Lusk must have had to come near or pass as she approached Mrs. Roberts. She shot her in the right side, as Mrs. Roberts' glasses were found near that place. Blood is found on that floor—not much, but a few drops, which, as the coroner and the district attorney and at least one other witness told you, were fresh blood marks at that time. Mrs. Roberts, feeling the impact of this horrible bullet that had passed entirely through her, started to escape. She ran into the open place where you find her. She staggered against the side of that door-jamb of the large folding door. The right side of her person would come in contact with the right hand post. As she passed through the door that was at her right hand, and as she staggered against that door, the blood from the wound in her right side came in contact with the door post. She went as far as she could get, over into the southeast corner of the parlor. There she had to turn. There was no further retreat for her. She turned to find some other mode of escape, and she faced this unerring gun and this expert shot in doing so. The next shot cut the great aorta one

inch above the heart, went in from one side and came out the other. Dr. Davies, Dr. Murphy, and other doctors have testified here, that with that shot Mrs. Roberts must have dropped. Why? The great aorta was punctured twice by a 25 caliber bullet. The blood pressure which is necessary to carry the blood from the heart to the brain was relieved. Did you gentlemen ever try to pump up an automobile tube that had been punctured? How far did you get with it? There is a good illustration of the pumping by the heart of blood to the brain. The punctured aorta would not permit of any pressure sufficient to carry the blood to the brain; consequently the brain became inactive instantly, and she collapsed. Grace Lusk had pursued her for this distance of twenty or twenty-five feet, and gave her the final shot and as it appears to us she would have continued to shoot until Mrs. Roberts dropped. Upon seeing her fall, what did Grace Lusk do? Sit down and cry? No. She immediately went upstairs. She had accomplished all that she could accomplish. She had fired upon her twice and she had fallen the second time. What is in the mind of the person who commits such a crime at that? Why, to escape; to get away from the seat of it. She knew that she had committed an awful crime, and she fled upstairs. She had no sooner gotten upstairs than she saw Dr. Roberts drive up in his automobile. She knew that he would come into that house and that her crime would be discovered. What did she do? Still unconscious, she says. But was she unconscious? She immediately starts to reload that pistol. Why? Because, gentlemen of the jury, she knew she had shot it. Is that unconsciousness? Why did she start to re-load that pistol? Because she knew she had shot it downstairs. Now, she tells you she knows nothing about it. In her haste and in her anxiety to re-load this gun, she turned the clip, as we call it, the magazine which shifts up into the handle—she turned it wrong end to; it would not go off. Then she got to wondering whether it would clog after her reloading it, as it had often done before, she says. Was she unconscious when that thought came into

her mind that the pistol might clog? Is that an unconscious act on her part? Or, was she conscious? Did she remember it having clogged before? She fired that gun out of the screened window, to see if it had clogged. When this shot was fired Dr. Roberts had called Mr. Block into the house; they had discovered Mrs. Roberts lying upon that floor; they had left the house to telephone. She saw them leave the house. knew that she would be detected, and that the awful crime that she had committed would be discovered. She saw that she was caught, and did what many people have done under like circumstances, tried to cheat the law of its penalty. She fired one shot through this screened window to see if the gun was working properly, and then, standing before her mirror, with her hand on her breast, she fired into her person to penetrate her heart, firing through the tip of her little finger in doing so. Grace Lusk claims this shot brought her to consciousness. Now, gentlemen, she had always supposed and was supposing at the time she felt for that pulsation at the apex or below the apex of the heart, that that was where the heart was.

The pulsations, as the doctors tell you, come from below the heart. The beat, as we call it, is below the apex of the heart. The impulse of the beat does not locate the heart. But she supposed her heart was there. Did she have consciousness when she reasoned that out? Was she insane, gentlemen, when she made this effort to locate the heart? No. That shows reasoning. And the reason for it was that she wanted to put that bullet through her heart and cheat the law of its penalty; and, as she says, to endeavor to get away from a trial just as she has been put to in this case.

What does she do then? She goes to her desk, takes a scrap of paper and writes the paper which has been offered in evidence and which was found in her desk covered with blood-stains from that bleeding finger; and you know, gentlemen of the jury, that nothing bleeds worse than the end of a finger. She got blood all over her desk, upon this paper and upon the floor—not from the wound she made in her breast,

because she had clothing enough there to take up by saturation the blood coming from that wound. She claims that the first shot into her body is what brought her to consciousness. Now, had she been conscious in discovering Dr. Roberts coming there, and in reasoning that she was caught redhanded in loading her gun, in fussing with the clip; putting it in right when she tried to get it in wrong; in firing it through the window to see if it would clog as it sometimes had done before? We claim that under these circumstances Grace Lusk knew, and was acting as a perfectly sane person when she was doing that; that she knew she had committed wrong in killing Mrs. Roberts when she shot into her own body. If she were capable of distinguishing between right and wrong at the time she shot Mrs. Roberts, then she was not insane in the eyes of the law.

The next thing that we hear is Grace Lusk at the head of the stairway calling for Dr. Roberts. My God, gentlemen, think of it! Calling for the husband of the woman she had just murdered! Why? Because she had eliminated that point of the triangle which was in the way; and now she was going to assert her alleged right to Dr. Roberts.

Mr. Block stepped into the stairway and said: "There will be someone here in a minute." He discovered Grace Lusk at the head of the stairs with the gun, her left hand bleeding. As Dr. Roberts started hurriedly for the Mills' home to telephone for help, and Mr. Block was just behind him, they heard a shot from the upstairs of the house, followed in a very few seconds by another shot from the same locality. The two shots sounded alike. There was not much of an interval between them, they say. The first shot was the shot out of the window. The second shot was the shot that Grace Lusk inflicted upon her own person for the purpose of taking her life and of cheating the law of its penalty and escaping this trial. In a few moments Dr. Davies was on the scene. He saw Dr. Roberts' car there and went to the house and Mr. Block told him of the tragedy. He examined Mrs. Roberts and she was then dead. Mr. Block told him: "There is

someone upstairs.'' Dr. Davies stepped into the stairway and started up the steps when Grace Lusk put her left hand out, with the revolver in her right and says: ''Stop! Don't come up here,'' with such emphasis that he stopped. Dr. Davies looked up. He saw a person then at the head of the stairs, bleeding, with a gun in her right hand. He wanted to come up to assist her in a surgical way. She said: ''No. Don't come up here.'' He backed out of the stairway and stepped back into the room. He began to advance to the stairway and tried to reason with her. ''Why did you do this?'' ''Because she called me such awful names.'' She knew what she had done. She knew why she had done it and she said then and there: ''Because she called me such awful names.'' Within the first twenty minutes, I think the doctor said, she requested him to get a paper and note down certain messages that she wanted to give to her friends. She still insisted that she loved Dr. Roberts in that message, and she asked Dr. Davies: ''Where is Mrs. Roberts?'' And he said: ''She is dead.'' She says: ''I am so sorry, but she called me such awful names.''

Gentlemen of the Jury, that shows that she knew all the time what she had done. She knew she had done a wrong. She knew the difference between right and wrong and she knew that she had shot this poor defenseless woman with the intention of killing her, and of her malice aforethought.

Then the chief of police appeared on the scene. She insisted that she was going to finish the job she had started and kill herself. She asked Dr. Davies: ''Who is that you are talking to down there?'' She wanted Dr. Roberts. He says: ''It is Don McKay, the chief of police.'' ''Oh,'' she says, ''I have heard something about him.'' She says: ''What will they do to me?'' ''Take you to jail, probably,'' Dr. Davies said. ''No, never,'' she said. ''Never take me to jail.'' She told the doctor to go away, she would finish the job she had started; and the final outcome was that he did go away after he had written the messages as she dictated them. He did go away out near the library table; and then he heard the

second shot and then: "You may come up now," and they went up. The second shot was just where the first shot was, only a quarter of an inch away from it, where she still believed her heart was. She intended to shoot herself, to kill. She intended to commit suicide and to save the trial that she has been put through here; in other words, as used to be said when capital punishment was in vogue, to "cheat the gallows." We have no gallows in this state; so to "cheat the law" is the better expression in Wisconsin.

Finally she fired that second shot, which conclusively establishes, under all circumstances and evidence in this case, that she was sane when she fired the first shot. They claim that she became sane after the impact of the bullet. We claim that she was still proceeding with the same idea and with the same intent in firing the second shot that she did the first. The second shot into her own body establishes the fact of her sanity all the way through.

She was taken, as soon as an ambulance could be prepared, to the Municipal Hospital. The superintendent of that hospital met her when she came in, and said to her: "Why did you do this?" "Because she called me such awful names." Was she without reason when she did this killing of Mrs. Roberts, after all these expressions to the chief of police, to Mr. Redford, or in his presence and Dr. Davies and Mae Collins? Four or five days later she was visited at the hospital by Mr. Steiner, the agent from the Department of Justice in Milwaukee, accompanied by the district attorney, M. S. Tullar, and by the sheriff. They all appeared before you and have told you, gentlemen of the jury, just what was said there on that occasion.

Mr. Steiner tells you that he asked Grace Lusk if she knew what she was about; if she was of sound mind at the time she did it, and she told him she was. Then the district attorney asked her how she came to do it. She said: "I did it because she called me such awful names. But what I cannot realize now—what I cannot see—is how I could do is so cooly and deliberately." These three persons have all testi-

fied to it before you and there is no question in your mind or in anybody's mind but that is just what she said and that she had a reason for saying it. The reason was because when she said it it was the truth. She had not then filed any plea of insanity. That was about the first of September. The plea of insanity was filed here December 3rd, three months later.

Dr. Roberts has told you and Mr. Block that possibly they were five or six minutes in going from the doctor's office over to the Mills' home. Dr. Davies tells you—and the Ovitt Block is right across from Dr. Roberts' office and just as far away—that it took him two minutes. Dr. Roberts went over there immediately upon his wife's telephoning him to come. He and Mr. Block got into his car and went right over there. I think he is over-estimating the time it would take to travel not to exceed two or three blocks. I think two or three minutes, or four at the outside, would cover the time that it took him to get into the Mills' house, where he found his wife just expiring. This shooting had taken place between the time Mrs. Roberts telephoned him and the time he reached there. It all took place within three or four or five minutes, or whatever it is, that he was on his way there. No discussions took place after Mrs. Roberts telephoned to Dr. Roberts to come there, no reading of letters. Undoubtedly she telephoned to the doctor while Miss Lusk was upstairs. She wanted matters straightened out. The doctor came over there immediately. Not over three, four, five or six minutes, as the case may be, until he arrived there and the whole act had been done. Grace Lusk had retreated upstairs and was in the act of re-loading her pistol when he arrived there. Dr. Davies says it only took him two minutes to get over there. He probably hurried a little more than Dr. Roberts did. His mission was a more hasty call.

Gentlemen, from all these facts and circumstances in this case, there can be no excuse, no justification for Grace Lusk killing Mrs. Roberts. From all the testimony in the case, from all the testimony which you heard, there was no occasion for Grace Lusk to shoot and kill her, and there is no

excuse or justification in the law for any such act—no matter what she called her, and no matter what she said to her; and I believe the Court will so instruct you.

The Court will submit, as I understand, three phases of homicide to you: Murder in the first degree; murder in the second degree; and manslaughter in the third degree.

The third degree of manslaughter is the killing of a human being while the defendant is in the heat of passion. Grace Lusk has taken this away from you gentlemen by saying she was not angry when she killed Mary Newman Roberts. So she has not availed herself of a defense of heat of passion but she has absolutely denied it and stated before you that she did not kill her while she was in the heat of passion. By that "heat of passion" is meant anger. There are times when a person becomes angry—so angry, in fact, that they do things which they would not have done in cooler moments. That is what the statute is meant to cover. Grace Lusk tells you she was not angry at that time. So what is there left in this case, gentlemen, for your consideration except this question of insanity which I have dwelt upon for some time and which will be further discussed before you?

Counsel for the defense will attempt, in their arguments to you, to try Dr. Roberts. He is not on trial here *as yet,* gentlemen of the jury; and you will not consider any arguments made to the effect that he is being tried here. If that is done for the purpose of throwing dust in your eyes so that you will not see the real facts in the case that you are now trying, you will know how to dispose of it. In the new system of warfare that we read about, they put down a barrage, and they camouflage things to shut out the real facts. Is this a barrage or is it a camouflage? That is for you to determine, gentlemen of the jury. A great deal will be said to you in prayers for sympathy for Grace Lusk. No one sympathizes with her any more than I do. I am sorry that she did what she did. But, gentlemen, you should not be carried away by sympathy. You are trying, as you held up your hands and swore that you would try, this case upon

the evidence offered to you in court; and you said that at the close of the evidence if there was left in your minds no reasonable doubt of the guilt of Grace Lusk, you would not hesitate to say so by your verdict. A great deal might be said about sympathy on both sides of this case—sympathy for the woman who is ushered into the presence of her Maker without any preparation. But, it has no place in this case, and I am not going to discuss it. Attempts to arouse sympathy here are for a purpose and that purpose is not complete justice such as you have sworn to give in this case.

Now, gentlemen, I have discussed only the salient features of the murder, leaving those things which led up to the murder to be discussed by those who follow me. I have tried to be fair and you will judge whether or not I have been fair in the presentation of this case.

Take this case, gentlemen, and say what your verdict is upon the question of the guilt or innocence or insanity of Grace Lusk.

MR. LOCKNEY FOR THE PRISONER.

Mr. Lockney. Gentlemen of the Jury: You are the ultimate judges, the last and final judges of the facts in this matter. You have heard them talked about and testified to. You will hear discussion and argument of them from both sides. You will hear the direction of His Honor upon the bench as to what the law is; but when all is said and done, you are the final, ultimate instrumentalities by which, so far as it may be possible, justice is wrought. Under ordinary circumstances, the burden is not so large; but in a tragic situation such as has unfolded itself before you here the burden becomes tremendous. It was in view of the burden of that responsibility that you were so carefully examined before you were accepted by both sides as men not merely fit, but qualified by your attitude of mind to sit in this jury-box and discharge that duty, and carry that burden.

There was a time in England—and we get our system of law from the common law of England essentially—when the

prisoner at the bar was denied the privilege of the assistance of counsel. It took a long time for tradition to break away from that, and for people to realize that a person charged with crime was not at once an outcast from the pale of society.

It was realized that human justice was imperfect at the best; that whatever the act may be that is being inquired into, there may be different qualities, degrees, circumstances, differences of responsibility, and in the view that human justice should take of that act. It was also realized that people who were absolutely innocent were often accused of crime under circumstances exceedingly difficult to meet, and that in order to have the system of inquiry and determination complete, it was necessary that both sides of the matter should be inquired into; that the people making the accusation, and presenting the evidence that appeared to be so strong as to make the act itself rest upon the very pinnacle of infamy, should be subjected to the greatest test of truth that the mind of man has yet been able to devise—the test of cross examination, the test that brings out all the story and all the circumstances surrounding the act.

You said when you were examined as jurors that you came to the trial of this case without any formed or expressed opinions about the truth or the right of the matter; that you came here with open minds and hearts, free from prejudice, free from bias, willing and able and determined to sit to the very end of the case with open minds, not reaching conclusions upon half truths. Approaching the matter in that state of mind, you also said that you had no prejudice, no feeling, no bias, against the interposition, in behalf of a defendant situated as this one is, of the defense of lack of mental responsibility at the time the act was committed—in other words, to the defense of insanity. You said when you were questioned that you would be able to consider and weigh all the facts and circumstances and evidence brought out in the case bearing upon that branch of it, with the same mind, in the same scales that you would any other part or branch of the case.

It is easy for it to be suggested—as it has been already by innuendo—that a defense of insanity is a made-up defense; that it is thought of after the event. We realize that we have that suggestion to meet; that it will be argued and reargued in one form or another, and that you will be asked—not directly, but by suggestion—to do exactly that thing that you said you would not do; that is to fail to give to that defense in this case the same careful and conscientious thought, the same weight of consideration to the evidence supporting it, that you would to anything else or to any other kind of defense.

It is to the credit of the humane and just laws under which we live that a person brought into court charged with crime is not there for the purpose of persecution. He is there for the purpose of fair prosecution. And I want to say, that the prosecution of this case has been *prosecution* and not *persecution.* It has been a fair presentation of the matter as it appeared at first blush and as it appeared from the standpoint of the highest degree of guilt, the most terrible crime, next to treason, that a human being can be charged with. The law does not desire nor require the conviction of an innocent person. It neither desires nor requires that the person who is the victim of circumstances, facts, heredity, conditions, or dethroned reason, who is not responsible, shall be found guilty as though responsibility were there. We of the defense have no excuses and no apologies to make for having interposed the special plea of insanity in this case; to have done less than that would have been to fail not only in our duty to our client, but in our duty to society, and particularly in our duty to you as jurors, that there might not be the reproach upon the administration of justice, that there might not be the accusing finger in the future in your hearts and minds that a person not mentally responsible should be punished as one who is mentally responsible. We stand here with the great statesman and lawyer, William H. Seward, who, in his Memoirs, says that the thing that he was proudest of in his career was not his great work as

secretary of state, but was the defense, as a young lawyer in Elmira, of a negro, accused of a heinous crime, upon the ground that that negro was insane and not mentally responsible at the time of the commission of the act,[9] done at a time when that was an unusual thing, at a time when it took courage on the part of that young lawyer to do it.

There are certain issues to be met and solved in every case, no matter how petty. Ordinarily, there is only one form of verdict submitted. In this case there are five. That, in itself, should be an intimation that the case is not so simple, not so clear, not so plain as counsel for the State in his opening argument has intimated. These five verdicts which will be submitted to you are these: Guilty of murder in the first degree, or in the second degree, or in the third degree, or not guilty, or not guilty because insane. In other words, the testimony in this case is of so varied and complex a nature, the problem is so difficult, that it requires not one, but five, issues to be submitted to you for your judgment.

Now, what is the first degree of crime that is to be submitted to you? It is a premeditated killing. This means to think over, to form the design intentionally, consciously, just as you would form the design to take a trip to Chicago or to Milwaukee, or do any other thing. It means deliberation, thought, intent.

His Honor will charge you that no specific length of time is required to go through that act of premeditation; that it may be done quickly. But it must be a thinking over. "Meditate" means to think and "pre" means before. It means a thinking over beforehand and the formation of the intent and purpose with coolness to effect the death of another.

We shall contend that the evidence in the case very clearly shows that there is nothing of that kind here.

The second issue is the killing of a human being when perpetrated by any act imminently dangerous to others and

[20] See, Trial of Freeman 16 Am. St. Tr.

evincing a depraved mind regardless of human life, without premeditated design.

The third issue is manslaughter in the third degree. That is defined in this way: "Any person who shall kill another in the heat of passion, without a design to effect death by a dangerous weapon."

Now, counsel, in his discussion of that, disposed of it very briefly by saying that it was out of the case because of the defendant's testimony. An all sufficient answer to his suggestion is that His Honor has submitted that issue for you to pass upon.

Then, the other two possible verdicts are: "Not guilty," and "Not guilty because insane."

Before I take up the "Not guilty because insane" proposition, I want to discuss one or two other legal propositions. First, the defendant comes into court presumed to be innocent. No person, be he of high or low degree, is brought into court with the presumption in advance, on account of the charge, or the arrest, or of the proceedings, or of the machinery of the law—that he or she is guilty. They come in with the burden and the duty not of proving themselves innocent, but with the duty and the burden upon the State to prove them guilty. That is the rule of law that applies to all of us, to this defendant today, and that will apply to her when you finally withdraw to your jury room for the consideration of this cause. It is a rule that you would want applied to you, in the minds and the hearts of a jury, if you, through any misfortune of circumstances, through any combination of events, should ever face a jury of twelve men of your county. That presumption is one of our guide posts. It runs through to the end of the trial, to guide you in your examination of the evidence; and in our consideration of all the issues submitted.

There must, of course, be a time, in some cases after the jury have listened to the whole case, after it has heard all the evidence and after it has gone to the jury room, when that presumption is overcome. Elsewise human justice would

fail and there could be no conviction in any case under any circumstances. Now, when is that time? It comes when, by the evidence in the case adduced in court, you are satisfied and convinced beyond a reasonable doubt that the defendant is guilty of something, and of the degree of that guilt.

You have heard the phrase, reasonable doubt. A reasonable doubt is such a doubt arising from the evidence, or the lack of evidence, as would cause a reasonably prudent man to pause and hesitate in the most important affairs of life; and evidence does not measure up to the requirement of being sufficient to overcome that presumption of innocence in regard to any issue in the case until that evidence is so compelling upon your minds that it satisfies you beyond this reasonable doubt—that is, beyond the point or the state of mind where the reasonably prudent man would pause or hesitate in the most important affairs of life.

In a civil suit the rule of proof is entirely different. There your mind must be satisfied, not beyond all reasonable doubt of the right and truth of the matter, but it must be satisfied by a preponderance of evidence. You may still have a reasonable doubt of the correctness of your decision as jurors, and yet, under the rule of proof that is laid down to you by the Court, you have a right in a civil case as jurors, notwithstanding, as reasonable men, to find your verdict.

Far different from that is the rule of duty and of law in a criminal case. You cannot act, you must not act, you dare not act, on your oaths, upon any overbearing, overweighing preponderance of the evidence, so long as there is in your minds that doubt, as reasonable men, which would cause you to pause and hesitate in the graver and most important affairs of life. There the law says: "Halt! Beyond that mark you shall not go against the defendant." The Court will tell you that you should not search wildly and outside the evidence for doubt. It does not mean that you should indulge wild or fanciful doubt; but it means that when such a doubt reasonably arises upon the evidence in the case, that you must stop, right then and there in your mind's ope-

ration upon that branch of the case, and whatever it may be, give to the defendant the benefit of that doubtful, pausing and hesitating state of mind.

What is the insanity that you are concerned with in this case? The Court will probably define and deal with it at some length, and at such length that I shall not undertake to give the words by which he will express it. Roughly, and in substance, the insanity with which you have to deal is a state of mind, the result of disease, that destroys reason, that overthrows the power to reason, that displaces responsibility.

Legal insanity is a condition of the mind of the defendant at the time of the commission of the act where the brain is so diseased, that reason does not operate so as to enable the person to distinguish between right and wrong in regard to the act.

The law is, as human experience teaches, that the presumption is that every person is sane until the contrary is shown or suggested to the point that the law requires. Every person is presumed to be sane; but it does not follow from that that the burden is upon the defense, where the special plea of insanity is interposed, to prove the insanity of the defendant beyond a reasonable doubt, as the State is required to prove all elements of its case. That could not stand in the face of the presumption of innocence. So what the defense has to do on the issue of insanity, and what it must do, is this: to bring about in the minds of the jury a reasonable doubt as to the sanity of the defendant; in other words, if upon the examination of all the evidence in the case bearing upon the mental state of the defendant, the mind of the jury is in that condition of reasonable doubt, used just as I discussed and defined it before, it is your duty again to give the defendant the benefit of that doubt, and find in favor of insanity. All that I have said to you on the subject of what reasonable doubt applies in that way to your consideration of the evidence upon the question of the mental condition of the defendant at the time the tragedy occurred; and, if upon the consideration of all that evidence you are in a state of mind,

where, as reasonable men, approaching the consideration of the most important affairs in life, you pause and hesitate as to the sanity or insanity of the defendant, then, again, it is your duty, under your obligation as jurors, to find in favor of the insanity of the defendant.

There are so many things and elements to be considered in this case that it is a little bit difficult to know from just exactly what angle to approach them. This is an extraordinary case; one, the like of which does not happen very often; one not so simple as the prosecution indicates.

On the 21st day of last June something happened in the city of Waukesha. One woman, a wife, a respectable woman, with an excellent position in society in this community, was dead. Another woman who had moved in the same circles, had the same friends, been part of the same life—who had the respect and the regard of hosts of friends, through fifteen to twenty years—hard and assiduous toil in and devotion to a profession, who had contact with all the finer and all the elevating and ennobling things of life, a woman of spotless life—except for the events connected with this tragedy—of splendid reputation, lay supposedly dying upon a bed of pain in the Municipal Hospital of this city, placed there as the result of two bullets fired through her own body by her own hand.

The husband of the woman who was dead had been a man successful in business, well along in middle life; a man of more than ordinary financial success; who held an assured position in the social and business life of this city; was a trustee of one of the leading churches of the city; a handsome, a well dressed, a good living and doubtless a hard working man surrounded by all the apparent comforts of life. Is it any wonder that the inquiry was: How did this all happen? And it was not enough, it did not explain, to simply say that the finding of the body of the woman who was dead, and the knowledge of the things that happened at that house on Park avenue accounted for that tragic condition of affairs. Everybody knew that there was more

than that somewhere. Conditions of that kind do not occur without causes, without long and gradual insidious, unseen, unguarded, unappreciated, unweighed happenings that are the steps that impel or lead to a condition of that kind; and the problem in this case was: What were those causes; what were those impulses, those hidden things that brought about this condition of affairs?

The story has been told here in the evidence in this case, and it has been told in two ways. You cannot ignore nor avoid or get away from, in your consideration of this case, both the stories that attempt to throw upon the screen the things that led up to and caused the scene of June 21, 1917. You have heard one of those stories, one of those accounts, or attempts to account for the situation from the lips of a witness for the State. Without that story that he told the State could not possibly supply to the minds of any twelve intelligent men the ingredients or concomitants, the things that must be established beyond all reasonable doubt before any living human being can be found by you or by any other jury guilty of murder, as charged, in the first degree.

May 28.

I want to deal with him and with his story fairly, without passion, without yielding—if I am able to do it—to any of the impulses that a story of that kind might arouse in the mind of any man who has lived long enough to go beyond the period of adolescence; to deal with it, and with him as gently and as fairly as the picture that he himself draws and etches of himself, that bites into the minds as the acid upon the plate, will permit.

Let us take him as he appears, to all, except the wife in his house, and the inmates of his office. He is a man prepossessing in appearance, so far as the gifts of physical attractiveness of a certain kind are concerned; a man who had lived through forty-nine or fifty years of the world; a man who in those years had accumulated property; a man who started out in an honorable and necessary profession;

but who had seen beyond the bare routine of driving about the country and treating sick animals, cattle and horses; a man who had foreseen the opportunities that lay in the up breeding of better cattle, who perhaps was one of the first in that field, and successfully so, and proud of his success; a man whom it is also fair to infer went into that field as a secondary consideration, in order to further and advertise the sale of proprietary medicines for animals, and preparations and prescriptions of his own devising; a man who had been trusted by appointment to the highest position in the state in his own particular field; who had been state veterinarian; a man who was maintaining the outward semblance at least of living as man ought and should live by his connection with his church and his activities in it; a man who had associates among the leading people, or those who thought they were the leading people in his city; a man who traveled much about the country in his business. That is the outward appearance, at least as it occurs to me, of the witness from whom comes one stream of thought; a man who could go behind the bare details of this tragedy to find out what it was really all about and what it really all meant.

Now, in substance, what is his answer to that question mark that wrote itself so large and so wide and so ever present in the minds of all men who heard of the event after the afternoon of June 21, 1917. That answer is this: That in the month of March, 1915, he had conceived the idea of putting forth a publication, intended for the general good, to be introduced and which would fill a long felt want, in agricultural schools and in the general schools where agriculture is taught. Prior to that time he had had a very slight acquaintance with the defendant in this case. He had reason to believe that she had peculiar abilities of mind that were able to serve him in the furtherance of this project. He was able to supply the ideas, but he needed some advice and some assistance along the technical side of putting that publication in the best form and manner, and getting it

ready. Therefore, entirely without any other motives whatever, he got into communication with the defendant and suggested a business arrangement of that kind. That business arrangement began over the telephone early in March or late in February, 1915, and consisted of a mere extending of an invitation on his part to take up this work and an acceptance on her part to the extent that she was willing to meet him and consider it. Up to that time there had never been between them a solitary interview alone. He had never laid eyes upon her, had never conversed with her, as he tells the story, except in the presence of others, save for the telephone conversation where he was at one end of the wire and she was at the other.

Following that, early in March, 1915, an arrangement was made by which he met her at the Y. M. C. A. for the purpose of talking over this book. They talked it over and then his story is that out of a clear sky, like a thunderbolt from the blue, this defendant, without any word or preface, except the suggestion that she was cross because she did not get a letter from a sweetheart, made the cold blooded, cold turkey suggestion to him that he take her down to Chicago and give her a good time. That he protested. That all he could think at that time to say to her was "what would you think of me as an honorable man, an honorable married man, if I should do anything of that kind?" And that then running along into the future, he was so concerned with what she would think of him as an honorable married man that he further protected himself against that sudden onslaught upon his virtue—that he could say to her: "You better not do that now. You better wait a year, and maybe you won't want to do it then."

Finally, following on—he could not tell just whether he kissed her first or she kissed him first; these meetings continued, and finally, after a visit to Chicago for the purpose of talking over his book and the meeting in the Grand Pacific Hotel where he visited her at her room several times and remained there for different lengths of time, finally

illicit relations between them began. Then he tells us, by silences, by what he does not remember, and by what he does remember, that these relations continued down to April preceding the tragedy. But always she is the one who is responsible, that always he is the pursued and she is the pursuer. That at length this became so bad and she was pursuing him so hard that he began to want to fix the thing so that she would drop him instead of him dropping her.

All this time, he testifies, he was in the happiest of relations with his wife; and if his story is to be construed as an explanation of these events at all, it is a fair inference from his story that he had been up to that time an honorable married man in fact as well as in theory, until he was coerced or dragged from the path of virtue as an honorable man, in spite of his utmost resistance, by this girl. As time went along, she entirely, without assistance or encouragement or talk or discussion or anything whatever to go on, conceived the idea that she must eliminate Mrs. Roberts as one corner of the "eternal triangle." Therefore, on the 21st day of June, entirely without assistance, invitation, discussion or talk between her and Dr. Roberts at all, she shot Mrs. Roberts in order that she might have her place. That is the motive that was claimed in the opening statement.

Maybe you believe that. You have a right to, if you want to. I can only suggest a few things by way of possible tests to which a story of that kind ought to be subjected before it is received, swallowed, digested and made a part of the moving things that make up your minds in your consideration of this case.

One of the tests of truth as to any evidence in a case, any story that is told in court, is how the thing squares with common, ordinary human experience. I do not believe that within the ordinary experience of the ordinary man, such as you and I are, our fatal beauty has been so terribly fascinating that young women of any age jump at us like that and seduce and coerce us from the path of virtue, married or unmarried as we might be. I doubt whether that squares with the experience of the average man.

It would be an extraordinary thing, a thing that you would not believe—even if the claim were made that those words had fallen and that that plan of action had been pursued by a woman of the streets. But we have here not that kind of a woman as the other side of this equation. It is Dr. Roberts on one side and the defendant on the other. I say to you that if, by any chance, the story of Dr. Roberts is true, then it, in itself, is evidence that the defendant was not then, and has not been since, a sane person. Sane women don't act as Dr. Roberts claims that girl acted, in view of the kind of woman that she unquestionably was. If the girl did anything of that kind she was, beyond the peradventure of a doubt, insane; but I am not arguing to you that she did anything of that kind. I am going to ask you to follow me along the path that actually brought that girl —after the time she met that man who makes this extraordinary and unbelievable answer—to the point where she sits today. And it is a natural and not an unnatural path that she traveled, pushed along by, and in part, and so far as it was to his interests, accompanied by him. There are two tragedies in this case. There is the tragedy that occurred on the 21st day of June, 1917. We cannot minimize it. Counsel spoke of the Mosaic Law; two of them, as he said, had been violated in this case. He cited the one "Thou shalt not kill," and he cited the other against covetousness. Strange, strange that he did not cite another section, another Commandment of that Mosaic Law: "Thou shalt not commit adultery." True it is that after Moses there came another who summed up all the law when he said: "Thou shalt love the Lord, thy God, with all thy soul, and thy neighbor as thyself." And "thy neighbor" included the school ma'am teaching in the Y. M. C. A. after those years of extraordinary training and sickness. That Commandment lay upon the man who had lived this successful life. And the other tragedy in this case is the breaking down, the destruction of all that that girl was and had been until she met that man, to the place where she is before you today. Let us see

what the answer really is and what lies behind this problem. Who and what was the defendant?

She grew up, tended and cared for and loved by father and that mother and by the neighbors that came into that home. She was a bright girl, overly bright, not strong, rather retiring, preferred the company of girls and of books to the company of boys about the playground; the kind of girl that devotes herself intensely, day after day, and with all the strength and ardor of her young life to achieve the ambition that she had, to be something better than what she was. Graduated from the high school, marked by certain peculiarities of conduct, temperament, mentality, but mostly marked by her ability of mind and her devotion to her books. She entered the field of teaching; went to Whitewater to Normal School, and then went out to teach; went back to Normal School in Milwaukee to prepare herself further for teaching; was not satisfied that she had done all with her one talent that the Lord had given her that could be done with it; so she struggled on to make that talent multiply. She went to the University and graduated there; she was selected by those in charge of the observation of school teachers and school work in Milwaukee as one of those specially worthy to deal with educational problems; had been sent abroad for that purpose; had been abroad once on her own motion in order that she might be better able and have a richer fund of knowledge and observation to pass on to those who were her pupils. How did she do this thing? It was seventeen years between the time that she left the portals of the Stoughton school to the time that she left the University of Wisconsin with that degree of recognition that was necessary before she could do the fullest work in her teaching profession. How did she do it? The ordinary boy or girl, as we all know, does that thing between the high school and the leaving of the University with that degree in four years. Seventeen years passed for this girl before she had attained the place that four years would have put her at, had she been able to follow her

course right up in that way. What was she doing in the meantime? Was she standing here and there in Y. M. C. A.'s or on the street corners, or any place else, saying to men: "Take me down to Chicago and give me a good time." You know she was not. Instead of that, she was fighting her way against ill health, year after year, place after place, school after school, with intervals of study in between. More fortunate, less ambitious and more happily placed girls spent hours of pleasure and ease while she spent them in pursuit of the necessary knowledge that was to qualify her, step by step, doing it in spite of physical handicaps that might well have daunted a less high and indomitable spirit. She was not straying year by year, time by time, month by month, vacation by vacation, here and there in the primrose paths of dalliance with any man, not even upon invitation of the man, let alone violating what we all know to be the first and deepest seated consideration of womanhood, the thing that gives her the most happiness of anything else if she is a natural woman, to be pursued or sought after.

She was earning golden opinions of those who had the chance to know her, and who did know her; accumulating efforts, with all that friendship means, not in one place and spot but following and trailing her like a cloud of glory to her darkest hour; the friends that she had made from girlhood days, had their good opinions of her. You saw them come here, those who knew her from the time she was a girl in school, down to the city of Waukesha, through the hours preceding the tragedy itself. They were not of any special kind or variety, not of one sex alone. They were the men and the women who had known her best, who had their best opportunities for seeing her, who had seen her at the period of life when, if she were a light minded girl inclined to stray from the paths of virtue at all, she would have been most likely to do it. Old men, the companions of her youth, her school mates all along the line; motherly women with broad bosoms that have sheltered families, coming here to say that

she was good—down to the wife of the superintendent of schools of this county; down to the women who knew her in the clubs of this city and the circle in which she moved; down to the superintendent of schools of this city himself; down to the aged man who was clerk of that school board and saw her day after day—all tell the same story of an unsmirched and spotless life and character.

The story that was told here by that man on the witness stand would have been impossible had he been telling about a harlot with a red trail from here to San Francisco. It becomes inconceivable folly, balderdash and rot when explained by him in the way and under the circumstances that he told it, of a girl with a record like that, unless you believe that at that time she was absolutely crazy. No, we know that things do not happen in that way. It never happened to any of you, and it never happened to any man. What did happen? What is the answer to what lay behind the 21st day of June, 1917? There lay behind it the girl that I have described to you, the girl that is pictured to you and made plain to you by the testimony of those who have known her variously and best, all along from the beginning of her struggle. There also lies behind the self-styled honorable married man living in happiness and contentment and sympathy and understanding, after nearly thirty years with the wife of his bosom, who had been dragged down from his high place by this vampire, the strangest vampire that human mind ever thought or heard of, the one who could be the woman who would do that kind of thing and still accumulate these treasures of esteem and friendship along the way all the time that she was engaged, sick, ill, saving her money and trying to make something better and bigger and more useful of herself.

She told, as well as she could, in little words that dropped like drops of water upon the marble block, the story of the gradual and insidious beginnings, and the follow-ups, and the little steps by which that ruin and that tragedy was accomplished. Not even the man who did it himself could

tell exactly how it was done. The wisest man, said to be, that the world has ever known gave it up thousands of years ago. It is written in the words of King Solomon: "There be four things that be too wonderful for me: The way of an eagle in the air; the way of a ship in the midst of the sea; the way of a serpent upon the rocks; and the way of a man with a maid."

I do not know whether or not that wise old king made those comparisons of his and ended up with "the way of the serpent upon the rock," before he spoke of "the way of a man with a maid," because he knew, and had in mind, the slimy similarity between the serpent and the seducer; but to me it seems that the order is significant.

The girl fell under his sinister influence, she became, up to a certain point, the woman malleable, the putty in his hands, the clay upon the potter's wheel, fibrant like the violin string to respond to the twitch and the pressure of his finger. He changed her from the girl she had been, from the gay and frank creature at times and the girl of natural melancholy and reticence and depression and blues at other times; from the kind of a girl who could write the letter she wrote to Winifred Wymans on the day of the tragedy that showed her real and natural self, the girl without a secret who could open her eyes and look the whole world in the face, to a creature with a thing gnawing at her heart, at her vitals, at her conscience, undermining everything that life had made her before that, subject to his will, the creature of his passions, the sympathizer to him who claimed the need of sympathy but all the time within her breast that torturing secret to go to bed with her every night and all. Woman! The thing that she did was wrong. Of course, it was wrong. But she did the thing that thousands of women during the centuries had done before because they were women and because they were worked upon, moulded, made, re-made, pulled to pieces and put together again by a man who is stronger than woman. In this case, if his wife's picture of him as she drew it to the defendant on the 21st day

of June, has any little finger's measure of truth in it, who was the master hand at that handicraft?

Contrast, if you will, ask yourselves which you are going to believe, the utter truthfulness of this girl all the way down in everything that she has told about this tragedy, or the other side of the story? Are you going to believe that she was untruthful and that he was truthful in his story of what occurred in the Y. M. C. A. the first time he had ever seen her and talked to her alone? That damning and damnable story, the one that damns and marks and sears and burns beyond the possibility of being forgotten, or do you believe the simple, human, natural truth that the girl told? The story of the casual meetings from 1913 on, here and there, mostly at church suppers and sociables where all that happened was that he, one of the leaders in a way of his community, a man of wealth and position and prestige who had so many automobiles that he hardly could remember how many he had, who had the handsome home and the assured position, was kindly, gentle, suave, agreeable, going out of his way to say the kind word, to give the gentle, inoffensive handclasp, to pay a little bit of attention to the lonely school ma'am. Those things are disarming, and he knew that they were disarming. Those things laid the foundation stones upon which he accomplished, studiously but surely, the plans upon which to build his dastardly structure. You must go gently in a field of that kind. If you see the object of your desire, or a possibility of conquest, or a chance to cut a new nick for another victim, you must not scare the quarry. Again, the wise man: "In vain in the sight of the bird is the net of the fowler displayed." You must not scare the bird by shooting the trap; you must not scare off the chance of getting that girl who looks good to you, with that kind of a life behind her, by being too abrupt, too rapid, too brutal in your advances. And that is the reason why insidious means are necessary, and are adopted by men like that, and used—and used, alas—successfully through all the ages.

Old, old, old stuff, reaching way back to the time of Helen of Troy, and back of that and back of that. Old, old stuff, but if handled by a master and conditions are just right, it does succeed in the end. That is why King Solomon said that the way of the man with the maid was beyond him, was too wonderful for him, because language cannot describe, not even from the lips either of the seducer or of the victim of that seduction, the way of that man with that maid. But it went on, always, always the kind note, always the note of gentleness, always the note of goodness misunderstood, desiring to be better understood in order that it might accomplish more good. No haste. No hurry. He takes her riding first from the place where she lived in the company of others. He is beginning to get a little warmer then, and he makes a little suggestion or two that she can recall that did not strike her as being just in the right note and tone, but it was so gently done, and so quickly withdrawn from that no one scarcely could take the risk of having perhaps misunderstood it, and put herself in the wrong instead of him. And then he follows it up with the business proposition, a proposition along the lines of her qualifications and her interest which appealed to her. Why shouldn't it? Probably the mere chance that she would get the money appealed to her. She could use it. The chance of the experience was something. It looked so desirable and so innocent as he covered the net of the fowler from the sight of the bird with that attractive cover. They worked on that book through November and December, the meetings becoming more and more and ever more frequent, and the little dodges by him that appealed to a woman's sympathy. Finally the suggestion on Christmas Eve that his wife could not go along, and wouldn't she ride out with him upon the merciful Christmas errand of distributing presents, largess to the children of his tenants and employes. Doubtless she knew that in the eyes of convention she should have answered "No, I won't go if Mrs. Roberts cannot go, or unless somebody else is going." But doubtless

also by that time that insidious poison that he had been pouring into her heart and mind had gone and gotten in some of its deadly work; and on that Christmas Eve, an hour when the hearts of man and woman, and particularly that of woman cries out in its loneliness for the things of home that Christmas means, the little children and the fireside and the sacred safety of the family circle—alas, she forgot convention and yielded, and took a fatal chance. Then with what cunning art, with what experience, of what spots to build upon in the nature of a good woman, he did his work. He picked that hour, and he picked that time—and leading up to it through the pathway of the child, the thing that was part of her life, he made the ancient old suggestion about the man desiring to do good, desiring to do more good, the man misunderstood in his home. Nothing new about that means of approach; and, as she tells it here, and tells it with the absolute ring of truth, how skillfully he did it, how he touched upon it, squirted the poison into the mind and being and was away again, waiting, waiting for the opportunity for the next dose. The siege was on in deadly earnest then; the miners and the sappers had run out their trenches round the borders of that girl's heart and mind and purity and honor; they were ever drawing a little bit closer. And so it goes on until some time late in February or in March, when there is the contrast—and you must grasp one or the other of those contrasting things as the key to unlock the riddle of what followed; grasp it in accordance with your experience and knowledge of the world, your ability and judgment to weigh and consider things and events.

The time is about the same—no doubt the occasion was identical—in both their minds. The time to which they had reference in testifying was no doubt identical, even the exact date of it, whatever that time may have been. His account is the key that he offers you, that the State offers you in this case, that the State finds it necessary to offer you, and asks you to grasp and cling to as the explanation;

that after this insidious encirclement and deceiving, that kind of a girl at the second meeting made the damnable proposition that he suggests; or the other key, the key of truth, the key of reality, the key that when struck against your heart strings and mine, and the heart strings of any and every living human being that hears or reads of it, rings forth the answering tone of truth itself, that that day, as she sat there working over that manuscript at that desk, he swiftly stooped over her and gave her the first kiss that passed between them. He thought the time was ripe. His judgment told him that he need delay no longer; that the defenses were where they could be taken by storm; that the time to rush in and be bold in his work had come; that he had worked upon her sympathy, her friendship, her admiration for his position, the familiarity that had grown up between them by want and use and seeing each other during these months, the friendship that had been established from the beginning because of the kindly and courteous manner in which he had treated her; that the time had come when he could wake her up to something deeper than that by the response that he might get from the God given passion that is in woman, and the God given passion that is in man; and then like the startled girl that she was, and exactly in accordance as all girls who have ever been ruined in that way have done before by the time-worn wiles of a married man, she rushed to her feet: "This is wrong. You are married. You ought not to do that;" and there he stands to complete his work. The fascination has gotten hold of her, and she does as all women who have ever been placed in similar situations and who have fallen have done. She yields and returns the caress. That is the key that unlocks the door to what followed, and gives the clue to the answer to the questions that will be submitted to you in this case.

This is a tragic story any way you look at it. If the seed had been ardent, what was it then, from then on? It came along with a rush, and a swing, until finally in April he accomplished his full purpose with that girl. What was it

to him, and what was it to her? To him it was but the achievement of a given aim, a thing that it is fair to infer from this testimony in this case, that he had accomplished repeatedly before. It was merely another instrument of pleasure at his disposal, useful to him as he saw fit to use it, and when a better, another and newer instrument crossed his path, when he became tired for any reason of that instrument, or when, for any reason, that instrument became inconvenient to him, to be cast aside as he had cast aside others that preceded her. That is all it meant to him.

To her it meant the giving up into his keeping of her woman's virtue; that up to that time she had kept sacred. It meant that he was fooling with a different kind of clay than he had ever touched before. It meant that this woman of nerves, intense, high-strung temperament, ancestry and training, this woman beyond the years of girlhood, who knew what she was giving when she gave at the behest of the late love that he had awakened in her heart, took the thing seriously. To him it was a joke. To him it was another incident. To her it was the first. It was the giving of the deepest treasure of her mind and heart to him—not merely the giving up of physical virtue. It was the devotion to that ignoble altar by her of all the fire and love and intensity and sympathy that a woman of her mind, her education, her capacity for thought and feeling was capable of giving to the man who had made her love him, even if that love be wrongful.

Then began to happen what she might expect would happen, what any man of the world or any woman of the world could have told that poor deluded creature would have happened, that one of two things may be true: Either that the married man who by representing himself as practically homeless, mismated, in need of aid and comfort and sympathy and companionship, at outs with his wife, is a liar, and the things at home are not such as he says they are, or it may be that he is truthful about it, and that they are that way; but that whichever one of those things may be

true, it is inevitably true that when the time of test comes, she is the woman who pays.

They went on together, and they played that ancient game. They had their stolen pleasures. He was good to her. He sought her. He desired her. It was perfectly easy to see, after seeing the woman, what an appeal she had, after she had laid at his feet all the talents, everything a body and mind and spirit and heart and love that the girl had—easy to see who was the pursuer and who the pursued; easy to see how the tale from him of a loveless home, a man who loved little children, and whose longing for little children was denied him in his home, might come to have a meaning for that girl who loved little children, whose life was with little children. But that sort of thing cannot go on forever. This poor foolish girl probably did not even stop to think in the beginning what the end might be. It ran along for more than a year, and apparently there was little to interfere with it. There was nothing but pursuit on his part, and she happy to be the pursued. He was jealous, or else he made believe he was, to increase his hold upon her, because that is part of a relation of that kind. I suppose it is part of the incense that love means to a woman's heart, a little tinge of jealousy on the part of the man. They went on with their work. They finished up this book. She went on with her teaching. They had little tiffs, but that was part of the game. They quarreled, lovers' quarrels, as lovers have always. But by and by the inevitable began to happen. His love began to cool a little bit. The idea began to dawn in the minds of both of them that this thing could not go on forever. His idea was that it would end the way all such other affairs in his experience had ended. He would let the girl down gradually, and by and by he would either throw her out with impunity or she would get out herself; but, in any event, she would cease to trouble him. But he was dealing with a different kind of a girl, with a girl of heart and mind and intelligence and qualities of spirit, and with her it was not so easy. She

began to find and to feel that the thing was not what it should be; that it could not go on indefinitely. She began to realize that perhaps there was another side to that arrangement; that perhaps there was a thing that ought to be done, not to repair the irreparable, but to make it at least as good as it could be made; that the least thing that could be done was to be honest. She believed that he had been honest with her in telling her about his unhappy relations with his wife. She knew that she was honest in her love and devotion to him. She believed, especially after reading and reviewing this book of Ellen Keys that there was a possibility that if the other woman knew the facts, she, too, might be honest according to defendant's notion of what constituted honesty; that at least they could talk the whole thing over as the facts were. And she began to want to have that done. A good deal was made of this book —a nasty book. I don't want it in my house. I don't want to read it. I cannot understand, any more than you men can, how any woman could write that kind of stuff. It seems that it is considered worth reading, thought-provoking, at least, and possibly it does deal with frankness about some situations that were ordinarily kept entirely under cover, and it may do some good to have those things met frankly. It has been the problem of the ages that nobody has solved yet. When and where and under what circumstances was that book called to the attention of this girl in any close and immediate way? That circumstance is highly significant of the whole situation, and of what was happening to her mental state. Previous to this winter preceding the tragedy she had never read Ellen Key. She had read some articles about her works in Harper's Magazine, the Atlantic Monthly and other serious magazines. At the time when she was beginning to be in this mental perturbation of mind, when that ancient and hackneyed Roman had begun to run his course, through none of her own seeking but through a mere accident, she wrote a review of that book. She wrote that review, not as an expression of her own ideas

upon the subject matter of the book—no reviewer does that —she wrote it to accommodate a friend, who was unable to do the work, in order that that paper might be prepared to be read by still another woman, one of the most respectable and respected married women that there is in the city of Waukesha, at some club made up of other married women in this city, where it seems that book was on the program for consideration. That book is legitimately in this case. It is part of the case, so far as it was read, and very little of it was read, very little of it was offered; but it is part of the evidence in this case, and it is right that that book should be considered for a proper purpose in the case. It was introduced because of the light that it might throw upon the state of mind of this defendant, and if it is only so used, and is not used for the purpose of arousing passion and prejudice in the minds of you gentlemen because of what that book's views may be so far as they are disclosed here, then there is no quarrel with it. But to attempt to use it for the purpose of prejudicing you against the defendant, by saying that those views were her views and that therefore she is a woman who ought to be convicted of the highest crime known to the law of this state because she entertained such views, is not a fair use to be made of that book, in view of the fact particularly that the book was being read and studied and considered in a circle made up of the most respectable married women there were in the city of Waukesha. If it was wrong and a cause of accusation and condemnation in itself, if it is a crime to read and review and consider what that book's theories were, it was no more wrong for her on that score than it was for the ladies who were going to be entertained and perhaps instructed by the review that she wrote and the excerpts from that book that were to be read. It has its legitimate place in the case because it may very well be that into the mind of that girl already subjected to the poison placed there and the breaking down that had been done by Dr. Roberts, there was poured this additional poison at a time when her mind

and heart and spirit were beginning to seek an exit of some kind.

We may wonder, well wonder, and it has been the cause of wonder and amusement since the beginning of time, how a man, evidently coarse, sensual, utterly without spirit and of not more than average intelligence, is able to drag down a refined, good, essentially noblehearted woman to his own base level. If you examine the conduct and demeanor of the man upon the witness stand here, if you observe some of the things that he did in this case, it gives a light upon his character; it gives a light by which we can view and see more accurately the means or instruments by which this change was accomplished. I have said it is a fair inference from the testimony, from what his wife said to the defendant on the day of the tragedy, that this was not his first experience of this kind. There are internal evidences in the testimony here that indicate the same thing, and indicate the incredibly cold, calculating, cautious, selfish and cowardly nature of the man, that indicates how little chance this woman had from the very beginning with a man of his kind and standing. Those evidences are in the letters that he produces here and in the way in which he produced them, and the use that he made of them.

It was agreed between them—naturally it would be in an intrigue of that kind—that it was wise to destroy all letters. Neither one of them did it absolutely; but it is a fair inference from his testimony that while the girl, more by accident than by design, kept these four or five letters of his, he was coldly, calculatingly and by design getting ready to protect himself and play safe, no matter what happened. Look at the way he brings them out, and what he brings—fragments, where he thinks there is something in the fragment that may hurt this defendant; letters—and it is a fair inference in spite of his denial of the fact, and only the letters that he brought would damage her here. I submit that no living man can hear him testify and see the way he produces these letters and the way he handled them, and believe for a

second that he produced all the correspondence of that girl that he saved.

He comes into court with them here, neatly checked and docketed, with the date at which they were probably sent, where it does not appear on the face of them or on the face of the parts of them that he brings; brings them in connection with a memorandum that he has sat down and carefully prepared for the purpose of enabling him to testify in this case; finally admits that he keeps a diary from which he gets some of the material that goes into the case. It is a fair inference from that fact, from the way he handles and produces these letters, that from the beginning he was carefully filing them in some kind of a secret filing-case where he thought they would be safe against the hour of need, if the hour of need ever came. How many more of these morgues he has got down there we have no means of knowing.

Then comes forward his private stenographer who was cognizant, unquestionably, of the relations between these two; and she produces, undoubtedly, every scrap of writing that she has ever received from this defendant which, by any possibility, could be tortured or wrung into a means against the defendant, down even to the little card upon which there is the merest expression such as goes along with an ordinary Christmas gift. Thus it indicates that as fast as any writing whatever of the defendant came into that office to his stenographer, that stenographer was under instructions to save and file that stuff, even down to the petty Christmas card, against the hour when it might be needed. What chance, what earthly chance, did this girl stand from the beginning, with a mind that was cold and cruel and crafty and cunning and far-seeing enough to do that sort of thing? Her faith in him began to be shaken; she wanted to bring the thing up from underneath, put it upon the table, make an end as decent and honorable as possible. Apparently he didn't have the courage to accept her view of it. Her mere appearance upon the stand, and the kind

of woman she shows herself to be, the kind of life and history and upbringing that she had and the things she had done and accomplished, are enough to show that when she began wanting something more than to be his secret mistress, had he then said: "No, I have been playing with you," that would have ended the proposition; but he either didn't have the courage to be frank with either woman or else he thought that he could play that game out and enjoy it a little bit longer, and that when it ended, he would be able to handle and manage the situation as he had handled and managed before.

She began to suspect that, "Perhaps I have been the silly fool; perhaps this man has been playing with me; perhaps even the words by which he won my trust and confidence were lies not merely on the subject of his love, but, perchance, even, he was lying to me when he told me about his home relations."

Think of him coming on the witness stand and denying that he ever talked with her along those lines. Did she imagine it? She told of it over and over before she went on this witness stand, and she has never told anything that did not square with her conduct and story upon this witness stand.

Think of that girl, as she must have been in spirit if not in fact, lowering herself upon her bended knees to a debased man of that kind, to try to wring from his reluctant lips the truth! It was all she wanted. She wanted the truth either way. If it was a barbed arrow in her heart he was going to drive home there, there was a time when she could have taken it without the effect that ultimately came upon her mind and being. But he reassured her. They had this meeting out at the County Line. She put the matter up to him. He played with her, evaded her. She slapped him. I never saw anything of its kind more comical—if there could be anything comical in a situation so tragic as this—as that poor abused man's description of the way he got that crack in the eye out there at the County Line and the remarkable

effect that that blow, which didn't leave a mark upon him, had in making him see some kind of queer black spots falling down in front of his eyes for several days afterwards. There followed a meeting in Milwaukee; there followed the determination, if he was playing with her, to take her own life. There followed the assurance of love and affection repeated from his lips. Is it any wonder that she took heart with desperation and believed, in part at least, and clung to the words that assured her tortured woman's heart, the words that above all else on earth was dear to her? He had made her what she was. He was the only source to which she could turn in her hour of need. She wanted him to tell his wife. She wanted to make sure whether that wife was the kind of wife, and their relations as husband and wife were the kind of relations that he had pictured over and over again to her. She wanted to put up, to the other woman the opportunity for choice. If she were deceived, poor unfortunate girl, she was willing, in that state of mind, to eliminate herself. How symptomatic of the whole situation, how characteristic and significant of the strain and stress, of the effect upon that mind predisposed to weakness and disease; ringing how true of the human story itself was that scene there where, after having wrung from him that promise that she knew his cowardly soul would give, she suddenly put down that pistol, throws her arms around his neck, and says: "If you don't mean it, you don't need to keep that promise; you can take it back." Whether she said it in those words or not, she meant: "For God's sake, tell me the truth about this thing so that I may know where I stand."

But instead of getting the truth, she got more lies. She got another promise, a promise that postponed the hour when it would be all brought up and settled in some way between the three; when she would know, by the test of truth itself, where she and the loving affection that she had poured out at the feet of this man stood; what it signified, what it represented, what the world held for her.

Two weeks, stretching to three weeks of anxiety and those weeks of wonder, those weeks of questioning, those weeks when at moments she was confident that her faith in him was well founded; those weeks when, like a gnawing thing at her heart and in her brain there was the ever recurring question: I wonder; I wonder; what about it? What have I been to him? What sort of manner of man really is he?''

Any acting about that that the counsel for the State talked about this morning? No actress in the world, not even if she had the talent of a Bernhardt and had been trained by David Belasco, could have equalled that picture of the simple power of truth as it fell from the writhing lips and the tortured body of that girl upon this stand baring her soul in this case.

What about those weeks? She drew her will. There is no question about that. She wrote these statements. She filed them away where they would be found after she was dead, after she had eliminated herself from the Eternal Triangle and the situation in which that man had placed her. She has loved her friends very, very dearly. She has made, as all the testimony in this case shows, friends, and she is proud of it. She is proud of her work and her religion and devoted to it. Then the thought of her father, the hope that he won't take it too hard; the little consolation laid upon her own heart that up to this time she has never caused him very much worry and that she wants that kind father's heart to forgive her for the great sorrow that her leaving the world in this way will cause him. Then the outbreak of her mind: ''I just can't live as I have been living these last few weeks,'' almost crazed with her heartache and humiliation.

There is another picture not made for the purpose of any trial but more eloquent than any words could possibly be and showing the state of her mind during the time that preceded the 21st of June. That, you remember, was the time when this man's cowardly postponement had laid her upon the rack to await his return. I refer to that list of her little

treasures; take it and look at it; page after page of it, prepared, she says as a typewritten inventory in blank down at the Y. M. C. A., all the little treasures that she had been able to accumulate in the years of her toil, the things that meant much to her, the things that she had kept and carried about from place to place wherever she went. This is the woman whom they want you to find here to be a deliberate, calculating and coldblooded murderess, and she tried to distribute them among the friends that she loved and who loved her. She tries with painstaking care to fit the little treasure that she is disposing of, to get it to the one who might appreciate it or who, for some reason or other, it might best suit or fit in with. At that same time and under that same strain and stress she writes this long typewritten letter which is Exhibit 82, etc., in this case; that extraordinary letter—extraordinary in what it says and in what it does not say. I am not going to read it. The one reading was enough. But I will leave it with you and submit it to you to ask yourselves the question, when you come to the moment when you must choose among the five answers to this problem, whether that letter in itself, standing by itself, much less when taken in connection with all the other things in this case having to do with that girl's heredity, with her manner of life, with her diseased brain, with the strain and tension that she was subjected to—I will ask you to ask yourselves frankly and honestly the question whether that letter itself could by any possibility have been written by the woman that this girl was when she met Roberts in 1914 and 1915, or whether it could have been written by any woman whose mind has not been dispoiled with mental disorder and disease.

The State has thus proved the insanity of the defendant in this case. The State has justified the counsel for the defense in the discharge of their duty in this case in putting in that plea.

Well, the thing goes on. It is indicative of the almost frantic and frenzied state of that girl's mind on top of

what she was doing during those few weeks in making her will and this disposition of her property and these frank revelations of her diseased mental condition, that on the day when he came back she could hardly wait in her agitation to find out whether he had returned to keep his promise. She got it. He put her off. The time when he could put that girl off had gone by, although that man did not seem to know it; he did not know that that poor wrecked and ruined brain of hers could not be put off any longer. She insisted. She even went through the poor and paltry threat that she would see a lawyer if he would not talk to her; and he, cool, unmoved and calculating and cautious, and doubtless thinking that he could stave her off again by that means, puts Miss Blodgett on the extension phone and figures that as she bluffed me once, I will bluff her by asking her if she knows the penalty for a threat over the telephone. He is lawyer as well as horse-doctor at that time. But it does not work. That threat is the mere figment of a moment in the excited and agitated heart and mind and brain and she says the time has come when this thing must be taken hold of by that man. "I cannot stand this any longer. I must know what my fate is to be." She goes over to his house. The details of their talk merely throws light upon the difference in their characters, and the difference in their states of mind. He was suave, cool, collected, not in the least disturbed, as he came to that door. Can you imagine yourself under similar circumstances coming to the door of the home that sheltered the wife? Upon that threshold was standing the woman that he had ruined. He was cool, calm, suave, undisturbed, and even a little bit put out about it, and rightfully so. He said "Good evening Miss Lusk!" I wonder how long it had been since he had called that girl "Miss Lusk." And when that cold tongue thrust that at her for the moment it was like the sting of a whip-lash upon her mind. She said she wanted to talk to him, that he should go home with her; and again this man, who had faced safely that pistol in the hands of that girl in

the Hotel Wisconsin and then had handed it back to her in the suitcase, when they got over on the corner of the park has two selfish, cowardly and despicable thoughts in his mind, and two only: "Have you got a gun?" and "Have you destroyed my letters?" That girl had loved that thing that was talking to her. Any wonder that her brain went to pieces later on? And then they go across the park and she asked him whether he will tell his wife—only that little pitiful request; and he tells her that he has not, he didn't want to spoil the pleasure or the business on that trip by telling her—again the selfishness—but he would tell her that night. And then after he had made that promise and told her again that he loved her, and loved her alone, she says: "Won't you kiss me? Won't you kiss me?" They must have been trembling lips that made that request at that time of that man. And then he makes perhaps what, to my mind, is the only honest reply that he had ever made to either woman since their relations began. He says: "I don't want to," or "I do not know. My mouth is filled with poison." Filled with poison! It has never been filled with anything else. But he kisses her, nevertheless and she tells him at that time again: "Now, if you are fooling with me, if you have been fooling with me, if I have been your plaything, the mere thing to gratify your animal lust and if there has been nothing about me that has chained you any stronger than that, tell me so; say it; let me know it, and that will be the end of it." But he cannot be honest with her, or courageous. Instead of telling her, as the fact was that he did not care for her, that he was through with her, that he was anxious to get rid of her and sending her upon her way, he again builds up the figment and the shadow of hope in that girl's diseased mind and she goes back to try to rest, but with the assurance in her heart that at least she has not unworthily bestowed her love. He even asks her for her sympathy. This was to give it the touch of sincerity, and strengthen that hope and that belief in that mind that was so anxious to believe what he was telling her.

Think of it! And that is the picture upon her mind in the moment that came later. He asked her for her sympathy by saying: "Aren't you sorry for me, for what I have got to go through with to-night?" And she gave him the true woman's answer: "No, not if you love me as you say you do."

To woman's love there is no end, no breadth, no length, no thickness, no condemnation of any kind, because it fills the eternal universe where it is real love and once bestowed. That was the love that this girl lavished upon this man. And with that assurance from him that his love equalled hers, that he wanted and cared for her and her alone, she went back to try to sleep. All this time her friends had been noticing her preoccupied condition of mind.

She went home that night. She seemed different. True, she went down and tried to eat some lunch; and counsel made a great deal of that and doubtless will make a great deal more. What would you expect her to do? There were others there in the house who wanted or were talking about lunch after she had prepared for the night. She could not sleep. She had spent the nights tossing upon her bed when she was not poring over her desk and the disposition of her property in preparation to take her poor life. So she went down to try to kill a few moments over that midnight lunch. It would have been far more significant of a normal state of mind at that time had she said: "No, I am tired and I need the sleep, and I am going right to bed." She had behind her the sleepless nights that racked her upon that bed when she wooed slumber and it would not come. That night she didn't go to sleep until early in the morning. She overslept. Did you ever know a person who lacked sleep who finally got a few winks of it in the early morning hours that they did not oversleep a little bit? And what kind of sleep does she get under those circumstances?

After she got up she was called by Mrs. Roberts on the telephone, who asked for an explanation and a meeting. An appointment was made, not by this woman that the State

would have you believe was a cool, deliberate, responsible murderess, but by the other woman. They made it not at a place where the gun was, but down at the Y. M. C. A. Both women start for that place. The defendant gets there. While she is waiting there an insurance man comes in and she is visibly agitated. He says that she is agitated. She tells him the conventional and paltry lie. She has to tell him something in order to get him out of there because she is expecting some of her pupils. The appointment is not kept and pretty soon she sees the reason: She sees through the window the man who should have been most willing to have an explanation, to have a meeting and an appointment, persuading his wife not to keep that appointment. She sees them go away. She is still in the confident belief of the night before, resting upon the assurance of his promise. She writes that almost playful letter to her friend. That in itself, written in that way under those circumstances, shows two things: the state of mind, the up and the down, the change, the instability of it, and beyond the peradventure of a doubt the absence of any premeditation or any design or intent upon her part to take Mrs. Roberts' life.

Husband and wife go over to the office. They had a stormy scene there which lasted practically all forenoon and continued, to some extent, up at the house. We have no means of knowing just the details of that. But there is enough to show that Mrs. Roberts was rightfully indignant, to show that she was not in a calm frame of mind herself; to show that she was agitated, excited and angry, as you would naturally expect. He played and played with the situation as he had played with everything, right up to the last minute, and he played with it once too often.

The defendant has her dinner, eats a little, is agitated there, goes down to the dressmaker's, but does not take the interest that she usually does in her fitting. She comes back to the house and calls up the doctor. She gets from him again at the very last moment, the lying declaration upon

which she had been relying that in effect he is faithful to her; that he has told his wife the truth.

He says that what she wanted him, Dr. Roberts, to tell his wife was that she, the defendant, was infatuated with him. What she wanted Dr. Roberts to tell his wife and made him promise, was that they were infatuated with each other, although that was not the words she used. She wanted him to make the promise, and supposed that he had told his wife, as he had told her over and over again, that he loved her ten thousand times more than he did at the beginning and more than anybody else, more than he did his wife. If the State is to rely upon the case it has made here and if that man is telling the truth about what that girl told him to tell his wife, then, again, you do not need any other evidence than that in itself to show that she must have been insane. Women don't ask men to go and tell their wives that they, the women, are in love with the men.

She got that assurance over that telephone. Just at that moment poor Mrs. Roberts comes in unannounced. Doubtless you can see what her state of mind must have been at that time. There comes the clash between those two women, the clash that was due to the actions of the man. One woman is filled with the truth as she conceives it to be; the other woman is filled with the truth as she conceives it to be. Whether there was truth in what either thought, God alone knows, because each of them got those contrary statements from the disciple of all lies. There were charges and recriminations. Mrs. Roberts declared it was not right on the part of this girl to feel as she said she did toward Dr. Roberts. She made threats of what she would do to this girl; that she would have her tarred and feathered, driven out of town, would ruin her opportunities for a livelihood; she asked questions as to whether she knew what had happened before to others and questions as to her condition; suggestions as to where she might die and how another had died. This talk between them was strained and doubtless in anger. The thought on the part of the defendant with

her diseased mind went back to the subject of eliminating herself. If all these things were true, my God, upon what an object had she wasted her affections? Was she but one of a succession and one of those had died in the manner that his wife had stated. How different the picture of what she meant to Dr. Roberts than the one that he had so carefully built up for two and a half or three years, that he had painted and reiterated and made new to her over and over again, even down to the night before and the moment that she had just left the telephone. Is it any wonder that that girl's brain might reek and reel under those circumstances? Is it any wonder that she went back to the thought that is indicated in these letters? Is it any wonder that she thought: "If I am to be tarred and feathered, if I am to be driven out of town, if my reputation and my usefulness and opportunity to live with anything that life means to me are to be taken from me, why, what is there in life itself? One thing and one only remains to me; I can at least, protect my pride as a woman to the point of showing that I am not quite the 'damn fool' chasing this man that he, with his lying tongue, has told her that I was. That much, and that alone, there is left for me."

She goes upstairs; she got those letters; she brought them down; she showed them to Mrs. Roberts. Mrs. Roberts could not read them; they were found upon the table and the floor there, although Mr. Tullar testified, as was stated, to his recollection that he found them upstairs in the left hand drawer. I don't care, because she might have carried them up stairs in the shape that they were in; there is not any dispute in the testimony of this case, as it comes from the lips of the State's witnesses who examined that place, that this identical letter was found upon that table. That disposes of their clever but very unfair argument that she went upstairs not to get those letters but to get the revolver to kill Mrs. Roberts.

When she had done that, one or the other of them said "we will get the doctor here." Mrs. Roberts goes to the

telephone; she comes back in her anger. She begins to abuse this high-strung and tortured girl, calls her those names which she knew in her heart of hearts she was not and never had been; and then reason failed, was gone; and the next she knew she was up in that room, one shot fired through her body, bleeding, trying to express in that cloudy state of consciousness what was read in the evidence in this case. When she was unconscious of what she was doing and without the possibility of distinguishing between right and wrong, or knowing what she was doing, Mrs. Roberts was shot. Then her mind goes back to the time when Mrs. Roberts came, and the things she said about her. She wrote, "This is the work of the man who said he loved me." There she was. She knew she was shot. "God forgive me, I loved him." Then as she saw the blood the shooting of herself had caused in that room upstairs, her woman's training, the good woman that she essentially was, came to her, and she said: "Pay Bianca Mills for the things I have spoiled." "I love you." Whether she meant Bianca, or whether she meant the man in the case, no one can tell. The first thing that she hears after Mrs. Roberts fell were the words of the doctor downstairs to Block: "My God, Mame is shot." Whether that was at a time after she had shot herself or before, it may be uncertain in the evidence in this case, no matter what witnesses may say. Then Dr. Davies came and she asked him the question: "Where is Mrs. Roberts?" Consciousness had returned enough so that she must and did have some suspicion at least of what had happened. From that time on everything that goes on there is perfectly consistent with her having lost her reason during the fatal period and between the time that she suffered the shock of these words upon her diseased mind and high-strung temperament with all that it had suffered during previous weeks and the time when she shot herself the first time. Her testimony is that it was after that first shot that she found herself or thought she found herself fooling with the chamber of that gun and fired the gun out of the win-

dow. Everything that was said, everything that was done after that shows what her state of mind was. When she went up to the hospital she was in pain. She lay there for two weeks tortured with pain and they say that in that time at the hospital, to Miss Collins and to Mr. Tullar and to the sheriff and to Mr. Steiner she said things that showed that she knew that she shot Mrs. Roberts and that she was not unconscious at the time, and not only that, but to fill it up with full measure that she reasoned all about her own state of mind and consciousness and said she was rational at the time and even supplied the element of coolness and deliberation.

I have not the slightest doubt that before I got up there that day she was asked questions substantially similar to those and doubtless made replies that sounded something like that; but it does not follow from that that what she did there she did with reason, knowledge, consciousness, much less with deliberation and intent. That girl upon that bed of pain at that time, you know without being told, would have said anything that any stronger mind suggested to her in the form of a leading question; but we haven't anything in this record of questions that were asked her, nor the replies which were made. Wouldn't it have been better and fairer if they had taken down what was said in the absence of her counsel there and not have to trust a failing human recollection upon the most delicate of all subjects, that of what somebody else said at a time when everybody connected with it is excited? There is too great a chance of mis-remembering a word here and there. There is too much chance of mis-remembering the form of the conversation. A word left out of a proposition, not heard or not remembered, may change the entire color. Every one of these men intended to be truthful in his testimony, but I will show you how little reliance can be placed upon the testimony of any of them.

You will recall that at the time that Mr. Steiner and Mr. Tullar testified the sheriff, Mr. Morris, happened to be out

of the court room. They had both testified and testified in accordance with the facts, that that interview occurred before I, her counsel, was even sent for; that I was not present at the time she is alleged to have made those statements; that there were in the room the sheriff, Mr. Tullar and Mr. Steiner; and yet the sheriff following them immediately upon the witness stand, but not having heard their testimony, in absolute honesty and good faith, insists that that conversation took place after I got there and that I was present in the room.

Murder in the first degree that is asked here by the State is impossible and unthinkable; impossible and unthinkable by all the evidence in the case; impossible and unthinkable by reason of the girl's testimony; impossible and unthinkable by reason of the things she did and wrote and said long before the event; unthinkable and impossible in view of the plans that she was making for a trip to California; impossible and unthinkable because of the utter absence of motive. The idea of her killing Mrs. Roberts to take her place, when she must have known that if Mrs. Roberts disappeared at her hands it forever prevented any possibility of that kind! Murder in the second degree is equally out of the question. Manslaughter in the third degree is possible, has support in the evidence, is in accordance with the facts—if you do not believe on all this evidence that that girl was insane at the time she took her life. But this girl was insane when it happened or she fired these shots in a tempest and torrent and cyclone of heat of passion and nothing else, brought on by the tragic situation which had been caused by the lies that were told by Dr. Roberts. One or the other is possible. Nothing more is possible in the way of a verdict of conviction.

You can take your choice of the doctors. The doctors of the defense, Dr. Powers, Dr. Becker, Dr. Love, Dr. Peterson, Dr. Harkness, who had known and treated her, say that in their opinion she was at that moment insane. You cannot brush their evidence out of the case; and further than that

you can turn to the cross-examination of the State's own experts, Dr. Studley and Dr. Wegge, and when you pin them down to it, there are admissions upon their part about what constitutes that kind of insanity, and insanity under those circumstances, that makes them witnesses for the defense upon that proposition, their declared opinion to the bare hypothetical question to the contrary notwithstanding. They admit everything that is necessary to be proved about this girl in order to constitute proof of her insanity. Dr. Wegge says: "I would not go as strong as that," repeatedly, over and over, and was frank and open enough to say that some of the elements in that question were a puzzle to him; that it bothered him more to answer them. None too certain, none too certain are those doctors of the State about the mental condition of this girl; and if the doctors of the State are uncertain, as their testimony clearly shows they are, and in the face of the combination of the doctors for the defense as to the fact of her insanity, how are you, gentlemen, going to say to yourselves in your consciences that on the whole testimony bearing on that subject there is not a reasonable doubt in your minds as to the mental condition of this girl? That you can go on and act upon that question without that pausing, the hesitation that reasonable men accord to the gravest and most important affairs of life? It cannot be done on that testimony.

The case is with you, or will be soon, under the instructions of His Honor. It has been a remarkable case. I do not recall another like it in all its features; and when your duty is done, you will at least have what poor consolation there may be for you for the weeks that you have sat here in confinement, in the thought that you have been a part of the incidents so unique and so tragic. It is not an easy thing, your duty in this case. There are those five verdicts. You will have to choose one of them. I am not making any plea for this defendant upon the ground of sympathy. Answer those questions when you get there as you think they ought to be answered.

MR. CLANCY FOR THE PRISONER.

May 29.

Mr. Clancy. Gentlemen of the Jury: For you to decide this case, you must consider the habits and standing of Miss Lusk up to the time that the serpent crossed her trail. I see her, a girl of five or six years, blond haired, starting to school in the little city of Stoughton. There was nothing very peculiar about her conduct, except that she was reticent, studious, extremely sensitive; and would cry and laugh in a sort of hysterical manner. She was a sensitive girl, devoted to her books, an exemplary student, one of that class of young girls that the mothers in the neighborhood held up to their daughters as an object lesson worthy of emulation; that was Grace Lusk, the school girl. She finished her course in the Stoughton school, passing through all the grades, at about the age of seventeen. Up to that period of time no tongue, even in the mouth of the greatest scandalmonger, had ever said aught against her. She leaves the Stoughton school at seventeen, and goes to Whitewater to fit herself for a teacher. It was a short year and in order to show you, gentlemen, that there has been no spot in her life that we were not willing to have you investigate, we brought here witnesses from Whitewater who knew her while she was attending the Normal School there. They were men and women of the highest character and standing with whom she became acquainted, because in her career she sought only the companionship of those who were learned and who were moral. She is still the same pure girl she was when she left the Stoughton high school. Then she begins to teach. She goes to Menomonee Falls. There is nothing in her record there that indicates that she was not the same pure girl that she was when she left the Whitewater Normal School. We brought here some of the best citizens of that little village who were acquainted with her, men and women at whose homes she visited; and they have told you what they thought of the character and habits of Grace Lusk.

You have a pure girl leaving Menomonee Falls. She

begins down in the grades and she works up higher and higher and higher in her school work. She needed more education. She had to earn the money to get it. She was devoted to books in Menomonee Falls and in Whitewater and Stoughton; in fact, books were her companions. She commences teaching in the Milwaukee schools. We brought here the people who were associated with her, the men and women of the highest standing, an honor for any person to enlist them as even casual acquaintances. She went to the Milwaukee Normal School and graduated. We brought here her teacher, Cheever, a man who testified as if he were honored by having the opportunity to say a good word in favor of his former pupil. We brought here the principal of the school in which she taught, a lady advanced in years; and she appeared upon the witness stand as if she were only too glad to say a word in favor of her former subordinate teacher.

She is as pure in Milwaukee as she was when a schoolgirl in the schools of Stoughton. She spent her vacations in taking lessons and studying in summer schools either in Chicago or elsewhere—all to fit herself for a teacher, not to fit herself for a siren. Her object was to make of herself a great teacher. She was not trying to fit herself to lure men from their families.

Not satisfied with what she learned in the Normal School she made up her mind that she would take a degree in the University of Wisconsin and in one year completed a course that ordinarily takes a year and a half. You can well imagine the strain upon her mentality to accomplish that amount of work in that period of time. Is there any question about her standing as a pupil, about her moral conduct, about her virtue in the University? She is climbing along now in years, because she entered the University in 1911. She was born in 1878. She commenced to suffer from violent headaches while teaching over at Menomonee Falls in 1901. Those headaches persisted and were with her when she was suffering excruciating pain from neuritis while studying in the University, the pain running through her arms, rendering

them useless, impotent, so that she could not even run a typewriter. This pain persisted for years; this ailment persisted for years.

Now, you have got her out of the University a pure woman. You have brought her through the city of Stoughton, the city of Whitewater, the village of Menomonee Falls and the great city of Milwaukee and her character is untarnished.

Now, these things are significant as enabling you to consider the kind of a person the defendant is, and you draw your inference as to whether or not such a person in her normal mind would be apt to become a fiend, a taker of human life and a self-destroyer, in the twinkling of an eye, unless some one of the instruments created to control the mind gave out and the mind ceased to operate. She comes to Waukesha, makes her home with an old friend, Bianca Mills. She commences to doctor in the hope of recovering from the neuritis with which she suffered. It was a slow process, probably the cure has not been effected at this hour. She did not do much teaching from 1912, the time she came to Waukesha, to 1914, excepting a little bit of substitute work, a few short weeks when some of the teachers in Waukesha might be called elsewhere or were incapacitated to teach. To the lay mind the testimony of Currier, her graduating schoolmate, may not seem of much importance. She was sensitive, says Currier; she would blush easily; she would cry easily; she would laugh easily. The person unaccustomed, not familiar with the symptons of the mental disorder would not sieze upon these little things as being at all significant when attempting to determine whether or not the defendant suffered from mental disease; but when the history of the parent is read, in connection with those little manifestations of sensitiveness, the acts of crying and laughing almost alternately, then you begin to see that at that period of time her predisposition to mental affliction was beginning to manifest itself. It didn't wait until the hour of the fatal shot. The disease was there, gentlemen of the jury, planted by the creator through the process of trans-

mission from parent to child. Apparently she started out with the rest of the girls in the schools of Stoughton unhandicapped by any mental affliction. In reality she did not start out that way; for she had it from the very hour that she was born. It was there seeping down from one generation to another; it came down to her; and the little manifestations which attracted the attention of her schoolmates were but a cloud the size of a man's hand that to the trained mind, possessing knowledge of the mental condition of parents, spelled a diseased mind.

Now, you have a virtuous woman, at the age of thirty-six, absolutely and unquestionably virtuous. You have a woman seeking the companionship and association of the most learned, the highest type of womanhood were her associates. She was inclined to be literary and studious. She was testing that diseased mind far beyond its capacity, but she did not know it. Her anxiety to become a great teacher, to be a shining mark in the educational world, was taxing that brain beyond its power of endurance.

She is selected out of a vast number of educators in the state of Wisconsin as one of five to go to Europe to study, inspect and report upon the school systems in the most erudite centers of the Old World. This little backwoods girl that would laugh and cry in her school days, this little auburn haired girl that would blush when teased, becomes a great woman, so large mentally that she attracts the attention of the greatest educators in the state; that she is charged with the duty of going to Europe and doing one of the most important things a teacher could be called upon to do—inspect; and not only inspect, but report upon the school systems that had been in existence for centuries and centuries. Do you think if she had been a cruel woman that a position of that kind would have been awarded her? Do you think that if she had been one of these gaily bedizening, alluring sirens, that the great educators of this state who were constantly commingling with her, would not have known it?

She comes to Waukesha, a beautiful little city, with schools

that are not the inferior of the schools of any other city of its size in the state. She came here, not to teach, but to recuperate. She was in no condition to teach. The strain upon her mentality, put there by herself in order that she might achieve the goal of her ambition, had left her in a condition where she could not teach. She went to her own old friend, Bianca Mills, to live there, to try to recover her lost health as best she could. She was a frail little creature there, as testimony shows; never strong. Her appearance upon the witness stand indicates that. But she had a desire, she had an aim, a purpose and an ambition and that was to become a great educator.

Now, gentlemen, is it conceivable that a person having such an aim voluntarily surrenders it all, and does it when her mind is not diseased, when her mentality is in normal condition? Does it occur to you that a young woman who has lived for a period of thirty-six years a spotless life, that if her mentality were normal you would find her in a court room charged with the offense this defendant is charged with? In reason can you say that such would be the fact? Apply your own observation and experience to the people whom you know. Did you ever see a woman in your own community who had lived a spotless life for thirty-five or thirty-six years, who had one aim and one purpose in life and that was to become a great educator, who sought the society of women rather than of men, who sought the society of the best class of women, women whose thoughts were exchanged in the purest and choicest English; do you know of a single case of a character of that kind, when such character became a felon, a taker of human life and a self destroyer, unless something went wrong with the brain?

The only way, gentlemen of the jury, you can solve these problems is by applying your own observation and experience to the facts. That is the way a juror gets at the truth. When a witness tells a story on the witness stand the first thing that runs through the juror's mind is: What have been my observations and experience respecting those facts?

And if that witness happens to tell a story out of harmony with the juror's observation and experience that juror fails to give credence to that witness because, to him, the story is improbable.

We have Grace Lusk in Waukesha in a most unfortunate environment. She comes to this little city a pure and undefiled woman, the convalescing student, the woman who, by reason of her literary achievements, practically unaided, had made the trip to Europe on that most important of all missions a school-teacher could be sent on.

We give her to Waukesha; pure and undefiled, a virtuous woman. She remains in Waukesha pure and undefiled for two years, and then she crosses the path of the serpent. And what kind of a serpent was he? A fellow well dressed, a man who had held a public office, whose name was known throughout the United States by reason of the advertisements of a patent medicine that he sent out. He was no ordinary man to this poor convalescent school-teacher. He had his limousine and he could take the girls out for a ride. He sported a diamond ring almost the size of a cent. He talked glibly about the farms and his prospects. He pictured to her the great factory that he would eventually establish; he pictured to her his love for children. Then he commenced to tell her about the coolness in his family, how his wife did not care for him, that he wanted this thing and his wife wanted that; there was no love between them; and then he employed this young girl to aid him; first he talked to her about getting out a text book, which probably contained a number of suggestive things that she never had thought of before. He commenced to have her handle his manuscripts, going to the Breeders' Journal and publications of that kind, all of this manuscript containing suggestive things; and that was Roberts' way of getting around an innocent girl. If she resented it he would pick up another piece of manuscript that was not quite so suggestive. He would test the girl by handing her what purported to be an innocent piece of manuscript, yet containing many sug-

gestive things; and as he saw the girl fail to object to the suggestive things, he pressed them stronger and stronger and stronger, and each document containing stronger suggestions along the sexual line than the one that preceded it. There is the serpent luring his victim, approaching by insidious degrees, a species of circumvention that it would take the most acute mind, or one trained to look after criminality, to discover. The ordinary lay mind, the mind of the ordinary girl unaccustomed to the ways of the world, would not be so quick to detect the reason for asking her to work upon manuscript of that kind. She works upon his manuscript, aids him in preparing it and wrote several chapters in the book. She helped him in every conceivable way. He won her sympathy. The space between the sympathy of a woman and her love is so short that one little movement takes it over from one to the other. She believed that he was a much abused man in his home, that he did not receive the treatment there that he ought to receive and he kept pressing that upon her mind; and each time they went out, the story of his domestic infelicities was repeated.

Now, I am not excusing her, if she were a normal minded person at that time. She had in her brain at that time the seeds that were so soon to blossom into crime. She listened to his alluring tales. Finally an incident occurred which brought him nearer to his goal. One evening in the Y. M. C. A. Building in 1915, he had reached that point where he felt reasonably sure that he could plant a kiss on the cheek of this defendant without resentment and he did it; and gentlemen of the jury, that kiss was the fatal shot that ended the life of his wife. He started it right there. From a normally minded individual, considering only the purest things in life, she began to consider those things that are debasing and immoral. He carried along this course of conduct for months and what would you expect it would eventuate in? She had never had anything to do with a man before; and now this nattily dressed man, the man of great wealth, a man who was known the country over, comes

to her imploring her love, telling her how much he thought of her; that from the first time he saw her she became the apple of his eye; and she listened to these stories. But you say: Why, she ought not to have done it. Agreed. Would she have done it if her brain were right? That is the question. Would she have done it? For 36 years she didn't do it. Why didn't she fall during that period intervening between her birth and the time she met Roberts? If she were naturally inclined to acts of lewdness why didn't she tumble down the precipice and into the pit below during those thirty-six years? Traveling as she has been, across the ocean and from continent to continent, mingling with both men and women, isn't it reasonable to assume there would have been a fall before that time? Now, why did she fall? You know the operations of the human mind are peculiar. Why do men do this and why do they do that? Why is not every man honest, upright, truthful, kind and sympathetic? Why does this one act this way and that one act that way? You gentlemen are not all the same. But while you differ as to character and habits, and have different aspirations and leanings and likes and dislikes, there is one thing that all of you revolt against, and that is crime. Now, you would not expect, any one of you, no matter what emergency might arise, that you might fall and be compelled to take a place like this defendant now occupies. You cannot imagine a circumstance that would bring you to such a place. Don't you think during those thirty-six years of undefiled maidenhood that she thought the same? She could not have been brought to the point where she could have collected in her imagination a situation such as confronts her now. You could not have made her believe it possible; but she fell, and she is before you; but if you had told her thirty-five years ago that such condition as now presents itself would transpire in her life—I do not know what kind of a shock you would have given this poor girl. Think of it! A pure mind and noble heart—how you would have shocked her if you had told her thirty-six years ago that she would become the mistress of a man like Roberts.

But she did reach that position. But she did not think she was the mistress of Roberts. She did not believe that for a moment. She believed that she was the one and only person in this world that Roberts loved. He told her that before he ever had any intimacy with her at all that she was the sole person whom he admired and loved. She did not believe she was performing the ignoble duty of a mistress. She believed that she was submitting to the man who would sacrifice his life for her love—child-like led into the belief. And he, on the other side, experienced in crime, took an entirely different view of it, although he knew all the time that he was leading this diseased minded girl into a position where she would be overwhelmed with disgrace and shame. Think of his cold, calculating manner. Gentlemen can any of you imagine that you could do such a thing as that; that you could resort to such subterfuges to gain the heart and love and sympathy of a girl you knew to be pure? And if you did do you suppose you would be on the witness stand bragging about it; would be here telling that grewsome story, characterizing it as bad as it could be done; would you be here telling that story to a jury of twelve men and to an audience of more than a thousand—facing this critical audience of pure women, as if he were proud of the mastery he had gained over this unfortunate girl? Proud of it!

Pleasure trips were taken; hotels visited; things indulged in that shock the conscience and confound the judgment; and a pure girl, a hitherto pure girl being one of the participants; and then they try to convince you that this girl who had kept her reputation pure and undefiled, running the test of social intercourse for thirty-six years, was normally minded. The ludicrous part of the story of Dr. Roberts was his claim that he was seduced by Miss Lusk; that he was beguiled by her from the paths of rectitude which he had theretofore trod; that she led him up to the vale of crime. You know we are told in Genesis that "The devil tempted Eve, and she did even give to her husband who did

eat." Men should cast that aside. Experience teaches us that it is not true in the affairs of human life, or in the experience of man. If Grace Lusk did what Dr. Roberts said she did—if she actually made the proposition to him to go to Chicago with her and do those things that ought not to be done, then, gentlemen of the jury, Grace Lusk was a raving maniac at that time, wholly incapable of distinguishing right from wrong, wholly incapable of comprehending the nature of the act she was inviting the doctor to make. But I do not believe such a thing happened. I am sure you are sure that it didn't. But he takes her along until it occurs to her that the matter is not right. She has several meetings with him and they talk the situation over and she tells him to tell his wife. "Go home and tell your wife the story of our crime, of what we have done. Tell her all." "Yes—yes, he was going to do it. He had it in his mind." He acted as if it was a thing he ought to do, but he always wanted the time postponed to some future date. He put it off. "No, not now. Later on. Not now, but later on I will take care of that."

And he put it off from time to time. And then they had a significant meeting out at the County Line. The defendant became somewhat violent and she struck the doctor. I do not think it was a very hard blow although he pretends to have seen dark spots falling before his eyes for several days afterwards. But immediately afterwards they were talking and laughing together as if nothing had occurred. Imagine the state of a human mind that can flit from extreme wrath to extreme joviality as quickly as that. Do normal minds do these things? Do normal people get so provoked that they will indulge in acts of violence, and immediately afterwards indulge in acts of love? No. If she were normally minded at that time she would have acted normally; she would have left him when she hit him and taken the train home; she would have jumped up and said: "Good by, I never want to see you again." But instead of that, immediately following this act of violence, there are manifestations

of love—wholly incompatible with the act that just preceded it and of such a nature that no one can consider the two acts together and say they emanate from a person who was normally minded. But look at the demand she made. She asked him to tell his wife. And he wanted time. She insisted that he must go home and tell her that night; but he begged for time. Time was given until the 14th day of June, at which time he was to return and tell his wife the whole story. He went away—yet, I think they were together the next night after this County Line meeting. At any rate he went away some time early in June. But before that there was another meeting down in Milwaukee. You heard the details of that meeting. Do they spell normal mindedness? Into the hotel they both go, and to his room. They sit and talk agreeably for an hour. They have supper together and the usual vein of ordinary concourse is maintained. In the twinkling of an eye—think of it, gentlemen of the jury—after being requested to tell his wife of their relations, he is told to stand back. Normal minds do such a thing? No. It was a crazed and infuriated mind. "Stand back!" The man she loved, "Stand back!" And he stood back; and the Gideon bible: "Put your left hand on that; hold up your right and swear to your Maker that you will tell your wife." And he swore. And immediately afterwards, like a flash of lightning, the revolver thrown aside, and her arms thrown around the neck of this man, pleadingly, imploringly: "If you are not sincere, if you don't really love me, tell me so now, and I will release you from every word of your promise. You need not keep that promise at all. Tell me, oh, tell me, if you do not love me."

Is that the act of a normal mind? A second before, standing with revolver in hand; the second after arms around the neck of the man at whose head she pointed the revolver. Are those normal things? Is that in accordance with your experience and observation? No, gentlemen of the jury, those things emanated from a mind that was crazed—crazed by the man at whose head that gun was pointed. He

had put the poison in and the poison was coming out and manifesting itself right in his presence in such a way that it struck terror to his soul. He got away with other girls. They were not born with the same brain this one was born with. They probably came from an ancestry that never knew the diseased brain. But this girl had gone into this thing with this man upon an entirely different theory than the one he had advanced. She went into it feeling that he loved her and he went into it feeling that he might make her his mistress. The two ideas clash, first out at the County Line, next at the meeting in Milwaukee. She said to herself: "I will put him to the test. Am I your mistress or do you love me?" And she held the revolver at his head and he told her he loved her ten thousand times more than he had ever loved her before. That was the pledge, gentlemen of the jury: That he worshipped the ground upon which she walked, and loved her ten thousand times more than he had ever loved her before. He knew that that mind was not right; that the person having that mind was kind and sympathetic, yet, when something occurred that shocked her sensitiveness, reason was dethroned and she was dangerous to deal with then. Why didn't he say to that poor girl at that time when she said to him: "If you were not sincere when you told me you loved me, if you didn't mean it, tell me now, and I will release you." "My poor dear girl, I have been deceiving you all the time. I didn't mean anything. I started out to have a good time with you, as I had had with many others; I started out to use you as I had used many others; I did have a little bit of admiration for you. I thought you were brilliant and brainy, but I was not attracted to you because of those attributes. It was something else that attracted me. No, Grace, I am through with you; I cannot leave my lawful wife." Do you know what would have happened? Her life would have been extinguished. The bullet would have gone through her heart and there would have been a scene in the Hotel Wisconsin in the city of Milwaukee; and Dr. Roberts had every reason

to believe that such would have been the case. So he lied and continued to lie and deceive, as he says, trying to pacify her. What was the use of pacifying, if the brain of the actress were normal at that time? Why exercise any acts of pacification if dealing with a normally minded individual? But from the very manner in which she handled that revolver, from what had transpired in the room, Roberts knew that that revolver was in the hands of a person whose brain power was not under her control. And he turned around and told her he loved her; repeated the pledges of fidelity and loyalty and love that he had so often made before. She told him: "You probably went into this thing from the start with a different idea from that which prompted me. Maybe you did. I never, up to this hour, thought you did. Maybe you did. Your conduct begins to show that you had an entirely different object in view." She could not understand it. She was as confiding as a child. She believed his story; and now she had come to the point where disillusionment was coming slowly, imperceptibly, and she tried to brush it back; she didn't want to believe that the man who had sworn to love her was not loyal to her. And then think of the preparations she made. Why, gentlemen, when those little sheets of paper were brought out here with the names of all the friends, it was the most pathetic thing you could ever witness—written before the 1st of June; sitting down and looking at the paper one second, and then up into heaven the next, knowing that that paper was to talk to her friends when she passed through the Great Beyond. Think of the hours required to make out that paper. During all this time two thoughts were chasing one another through her mind: First, "To remember all my friends." "I give the unexpired portion of the Chicago Tribune to Jane. I give to Susie this thing," —the little cushion. "I give my thimble to Carrie." And so on through a long list, carefully enumerating each one. What does that show? Does that signify anything to you—remembering friends? How would you look upon the char-

acter of a person, knowing that he was going to take his own life, sitting down and calling to mind the friends of a lifetime and then questioning if some of those friends might not feel just right if overlooked in the distribution of the few articles her labors had enabled her to accumulate. Does that mean anything in the nature of the woman? Does it spell anything to you—tenderly thinking of friends? Why, to me that sense of the binding tie of friendship manifested in this way will cause me ever to honor the person who has such beautiful characteristics. Remember your friends, even though the tortures of an agonizing mind were almost prostrating; remember your friends in that hour when you were preparing the fatal hemlock for yourself; thinking of friends at that time; and not only thinking of them, but doing for those friends the things which one friend would naturally do for another where the ties of friendship were strong. I tell you, gentlemen of the jury, such characteristics are not found in sirens and criminals.

I have been pointing to the little things that showed the peculiar feminine, lovable characteristic of this defendant. The State will give you the grewsome story; it will show the other side, the side which manifested itself through the result of the diseased brain. It is a pleasure even for jurors to know that the person upon whose liberty they are sitting, whose future is in the palm of their hand, has some beautiful characteristics, some which when weighed in the balance cause you to pause and hesitate in your deliberations, and wonder whether a person having the ties of friendship she has, the love for friends she has, is a born criminal. These things, when you go into your jury room, you will consider. You will also consider the surrounding circumstances which led up to the tragedy. You will remember the absence of the doctor and his wife, his agreement to return by the 15th of June, his failure—which appears to have been chronic with him. You remember the anxiety of the defendant respecting the return, her telephoning him soon after he reached his office and getting the

reply from him that he could not see her; then a request by her that he see her in the morning; a statement by him that he could not see her. Now, what was in that girl's mind when at 8:00 or 8:30 in the evening, she put on her hat and her jacket and went over to the Roberts' home? What strong, impelling motive drove her to do that? She rung the doorbell and Roberts came out. She talked with him for four or five minutes and then he accompanied her part of the way home; and on the way home he renewed his affections for her in the most emphatic manner possible; as he approached the point where he renewed these affections, the thought occurred that she had a revolver. Why that thought? What would she be carrying a revolver for? Why did that thought enter his mind? If she were a normal girl and he believed her to be normal, why would the thought that she had a revolver creep into his mind, and why the desired assurance that she did not have it? That question put by Roberts to her indicates stronger than the most positive statement made on the witness stand that the man knew her mind was not normal and he wanted assurance that there would be no danger to him as he accompanied her across the park. Having received those assurances he again renewed his love and again pledged himself to tell his wife of their relations.

Shortly after she reached home, after having been accompanied part way by the doctor, she was called up by the doctor's wife to know where the doctor was. The reply was: "He must be home by this time." That ended the communication for that day. She did not sleep much that night. She had not slept for six weeks very much. Her mind was agitated. The diseased mind was in a tempestuous condition. Reason was likely to be dethroned at any moment.

The next day she received a telephone message from Mrs. Roberts in which Mrs. Roberts stated: "I want to see you." The reply was: "I want to see you also." "You will find me at home," says Mrs. Roberts. A meeting was arranged to take place at the Y. M. C. A. Building, where the matter

could be talked over in the privacy of Miss Lusk's office and definite statements made. Mrs. Roberts came to the Y. M. C. A. about half past ten in the morning but the ever-vigilant eye of the husband was upon her movements and he stopped her and prevented her from going in and talking the matter over with Miss Lusk. Had she done that at that time the tragedy would have been averted; there would have been no tragedy so far as Mrs. Roberts was concerned, for it was never the intention of this defendant to take that life. I don't say there would not have been a tragedy later, but it would have been the tragedy of Miss Lusk taking her own life.

Now, Roberts knew, when he intercepted his wife, how the mind of this defendant operated, how reason would take wings, and that there might be just what happened at the Mills' home. Mrs. Roberts goes over to where Miss Lusk lives, comes in just as Miss Lusk had finished asking Roberts whether he had told his wife of the relations between them, and having received the reply and before she had a chance to say "Good by," something usually done over the telephone, Mrs. Roberts, in righteous indignation—I don't blame the woman at all—in righteous indignation commenced to abuse the defendant. She comes in without announcing herself; does not ring the doorbell; comes into the room in a hurry, and with considerable confusion, and in that confusion dropped her glasses. I am not censuring her; she acted the part of a natural woman, infuriated by her belief that something was wrong between her husband and the defendant. She might have talked more mildly and more modestly. She might not have permitted any such torrent of abuse; but it is not for us to censure that woman for what she did. Now, she did not know that she was playing upon a weak mind, a diseased mind, a paranoiac mind and a mind that had inherited disease. That Miss Lusk had made up her mind to commit suicide before that time is abundantly established by the evidence introduced by the State. She had made her will, she had disposed of

her little belongings amongst her many friends, so that the idea of committing suicide had never entirely left her mind. She was either to commit suicide or take her departure for the west and go away from the scene of her fall. Every preparation she had made, every preparation that she had anticipated making, everything that she had done up to that hour, repels an inference that at any stage in her life, at any period in her existence, had she thought of taking Mrs. Roberts' life. Her own was in jeopardy. Her thought was centered on taking her own life—not the life of either Dr. or Mrs. Roberts.

Mrs. Roberts demands that Grace Lusk, if she has any evidence showing that her husband had any affection for her, that she produce that evidence. Miss Lusk thought of the letters and the itinerary, and she went and brought them down. Mrs. Roberts then did not have her glasses at that time, and could not read them, but could read the itinerary. When the doctor went out to the different fairs to show his cattle, he would go from town to town and in order that the defendant might at all times be aware of where he was, he left his itinerary with her—Watertown, such a time, Jefferson, such a time. He doubtless left the same with his wife. She saw that itinerary. She went to the phone and called him up. Before Grace Lusk brought down that itinerary she had in her mind the idea: "I will prove to this woman that her husband has lied to her, and then as confirmation of that proof I will take my life in her presence." That was the idea. But she saw the revolver and put it in her pocket and she brought it down. Then comes the tirade of abuse which you heard from the witness stand. At one point in the tirade, something snapped. I do not know. I cannot any more tell you than I can tell you how I wag my finger, or how the things I am saying come to me. Those whose life work, part of it, has been devoted to the study of mental phenomena and its relation to other mental conditions, have given you the benefit of their observations and experience. They told you that shock sent her into a state

of amnesia, automatic amnesia. What she did thereafter was done automatically; not consciously, but automatically.

Now, do you believe that to be true, that such condition could prevail? In order to disbelieve it, you have got to disbelieve the testimony of their own alienists on cross examination. You have got to disbelieve the testimony of three honorable and reputable physicians of the city of Waukesha, in whose hands you would be willing to trust your own life, for they testified to that fact; you have got to disbelieve the two alienists from Milwaukee; in fact, you have got to disbelieve every one who testified on this trial.

The fatal shots were fired. Now, counsel says the first shot was sent through the right side. But if Grace Lusk fired those shots at Mrs. Roberts right after coming down the stairway, it would have been on the left side, not the right side. The counsel reasons further that there must have been a following up; that may have been automatically. That does not destroy the theory of the alienists in one particle; that could have been done automatically while reason was dethroned. They say it is proven in the case that the aorta was punctured at about an inch or an inch or two above the heart. Three or four alienists and doctors testified one way on the proposition, and three or four alienists and doctors testified the other way. But, gentlemen, you are layman and the counsel asks you to find beyond a reasonable doubt that one set of doctors, apparently no better qualified than the other, told the truth.

Now, upon the subject of her mental aberration at that time, or loss of reason, to the extent that she could not distinguish right from wrong. You have heard the testimony of all the alienists that such a condition could be brought about. You have got the testimony of the defendant that such a condition existed. Is there anything in the defendant's conduct that warrants the inference that she lies? Think of her laying bare the most grewsome periods of her life, the most grewsome things in her life, the frankness with which she testified and told things that fairly made her poor

frame quiver; and then imagine that she would lie to you about a thing of that kind. She goes upstairs. She shoots herself. In my opinion that is what caused consciousness to return in a cloudy condition, not full consciousness, by any means, but a cloudy sort of a consciousness. And then with the blood dripping from her self-inflicted wound, she scribbles onto a piece of paper: "I love him, I love him, I love him." Is that the act of a normal mind? Do normal minds do such things? And then she fills the revolver again, and is walking around mumbling to herself when Dr. Davies and the policeman McKay come to that house and they see her stand at the head of the stairs, calm, immovable, unperturbed, a placid look upon her face and the blood gushing from her self-inflicted wound. And they said the doctor wanted to go up to treat her wound, but she told him: "No, you stand back." Now, just think of that situation: One bullet through the body, clear through, passed in and out near the vital spot; and the doctor said she was calm, cool, collected. Can you imagine a normal mind being calm, cool and collected under such conditions? Draw upon your imaginations to the very limit and see, gentlemen of the jury, whether you could imagine a person looking eternity in the face, with blood gushing from her self-inflicted wound, calm, cool, collected! There was a little twitching, slight facial contortions due to the pain from which she was suffering; and then after parleying quite awhile they said she said: "Where is Mrs. Roberts?" "She is dead," was the reply. "Oh, I am so sorry; I am so sorry." And then the doctor still pressed for an opportunity to come and treat her wound and she refused to allow him; and then she immediately turned and makes a facetious remark about the chief of police, joking in the face of eternity, joking with a bullet hole through her body and a revolver in her hand to put another through it. Is that the work of a normal mind? Do normal minds do things of that sort?

Finally she said to the doctor, while frantically running her fingers over her own heart: "Doctor, is that wound

high enough to be fatal?'' And the reply was: ''No, I hardly think it is.'' And then up comes the hand with the revolver, and it drops back, impotent, by the side; and then the doctor persuaded her to sit down; and she sat down with the revolver in her lap; and there were two policemen and one doctor, and they were kept at the foot of the stairs for an hour and a quarter by this woman that they claim was perfectly sane. Would there be any danger for a great, strapping policeman to approach a poor, frail creature like this, unless her conduct admonished him that she was running amuck, a crazed mind, an uncontrollable mind, a diseased mind, and that the thing which her actions admonished him might be done would be done if he advanced upstairs? Then Miss Lusk attempted to tell the doctor what she wanted done and she recited to him so many things that he got a piece of paper and wrote them down and you have heard it read. Then the doctor came to the foot of the stairs and renewed his importunities for an opportunity to investigate and treat the wound. She refused to allow him to do it; said she wanted to die; said ''You step aside! You step aside!'' Why did she say that? She said she wanted to spare the doctor the horror of the tragedy. He stepped aside, and, immediately, a snap of the revolver and she tumbled over, bleeding from two wounds, both of which passed through her body from front to back. Then they took her to the hospital where she lay upon a bed of pain for a considerable time. She did not want to live. Then came the old father, bending with age, almost drowned with sorrow. He came to her bedside, fatherlike, as he had many a time when she was a child, and he said: ''Grace, my daughter, you must live. You *must* live. You must do your best to live.'' And, gentlemen of the jury, she did live; and it is the miracle that astounds the medical profession. Why was she kept alive? Was there any purpose in the ways of a Divine Providence that brought about the preservation of her life? Why was she preserved for this ordeal? Why was she kept to endure the further horrors of this trial and the further horrors of the intervening days and months which elapsed since

that father insisted that she try to live? It surpasses my comprehension, why this poor, frail girl, with two bullet holes through her body, anxious to die, was not permitted to die, but was kept alive to endure this trial. There was a purpose, but we poor human mortals do not know what it was.

Now, gentlemen, remember that these fatal shots, if fired by Grace Lusk, were fired in her home; that she did not go to the home of Mrs. Roberts to shoot Mrs. Roberts. Take that into consideration. She wanted that meeting at the Y. M. C. A. where it would doubtless have been held but for the intervention of this man Roberts. She was also preparing to leave town and get away from the scene of her fall. Now, would a person contemplating murder, with murder in her heart, be doing these things? She had no more intention of shooting Mrs. Roberts at that time than I have of shooting one of you now; not a particle. Therefore, I dismiss the charge of murder in the first degree. I dismiss the charge of murder in the second degree. In my opinion her brain was in such condition that she could not commit a crime at all; and by that I mean that the verdict of "Not guilty because insane" is the only possible verdict on the evidence that this jury can bring in, unless it be a verdict of Not Guilty.

Gentlemen, she is not the first woman to fall. You will recall the fallen woman way back nineteen hundred years ago that was brought before the greatest Being that ever trod this earth. That woman was taken in adultery, caught in the very act. The Scribes and the Pharisees who were the learned and wise men of Jerusalem, thought they could procure from that noble character a judgment which would warrant them in meting out to this unfortunate woman condign punishment, or that the judgment would be in accordance with the Mosaic Law, that she be stoned to death; and you will remember when that same Individual, turning to that critical multitude, said: "Let him who is without sin cast the first stone." Those Scribes and Pharisees took flight, leaving that Judge and woman alone. Then said the Judge to the woman: "Where are those, thine accusers?

Hath no man condemned thee?" And she replied: "No man, Lord." Then He said: "Neither do I condemn thee. Go sin no more." And you will remember that same Judge, when He was eating meat in the house of a Pharisee, when a woman from the slums of the city whose life was leprous with sin, stole in quietly behind him and bending over, weeping, washing his feet with her tears, and wiping them with the hairs of her head; again the Scribes and Pharisees thought that he could not be the kind of an individual he professed to be without knowing that a vile sinner was near him; but he, divining their thought, propounded to them the hypothetical question about the creditor who had two debtors, one a large debtor and the other small; and he forgave both. "Which of the two forgiven debtors ought to love their creditor most?" And the answer came: "The one to whom most was forgiven."

Now, these two acts of absolute forgiveness are safe to follow, because they come from a source the world will never cease to honor. To smile with those who smile, to sympathize with those who weep, is certain proof of man's nobility, for the brute neither smiles nor weeps; neither does he know the inspiring touch of a noble soul; he neither sympathizes nor craves sympathy. But you ask in your imagination how did this frail woman happen to commit this horrible crime? How did she happen to do it? I will answer that: When the creator tells me how a sudden change in the brain power will convert the mildest creature into a raving maniac in the twinkling of an eye. The brain is one of the most delicate cases in the human being, it lies among millions of nerves, thousands of them so fine that they cannot be seen by the naked eye and yet each having its particular and peculiar function to perform. When one is disarranged it completely upsets natural and normal conditions of mind and causes one to do things that his very nature revolts against when his condition is normal.

Why, if all the alienists in the universe should tell me that Grace Lusk had full control of her will power and her mind when this tragedy occurred, I would not believe it, be-

cause the common experience of mankind teaches us that tender, loving hearts, controlled by normal minds, or normal minds controlled by tender, loving hearts such as hers was and is, never break out into exhibitions of brutality which terrorize and destroy that which they admire and adore.

As you sit before me in full possession of your mental faculties you probably imagine that you are immune from any disturbance which would completely revolutionize your entire life. But you are not. I have seen the strongest mentalities totter on the throne of reason in case of a sudden fright, and the most robust forms do the most frightful things imaginable. The emotions of man are inexorable taskmasters. They snatch from him his brain power with barbarous ferocity leaving him a crazed and infuriated being bereft of every semblance of manhood, save his cold, clayey form. I have heard men talk, yea, even boast of what they did in this or that emergency and in a few seconds I have seen them subjected to the test and heard them admit that they lost their minds and did the very opposite of what they expected to do. The tissues of the human mind are not as stone when confronted with conditions warranting the inference that there is danger to life. Without calculating the chance, passengers jump frantically to death when cool-headed persons remain quiescent and see no occasion for alarm and there is none in fact. In our sober moments, when nothing occurs to disturb the mind, we are apt to indulge in these speculations; but when once subjected to the test and we learn how undependable the human mind is, the assurance that we would act so and so under such and such conditions, leaves us entirely and we become a witness for the theory that fright and shock will dethrone reason and leave the person in such condition that whatever acts he performs are performed automatically. Have you had the experience of seeing a sudden fright come? Something turns up at once, shocks the mind, dethrones reason, and pandemonium prevails. A person gets a sudden fright and the mind goes.

I know I feel now at this instant of time that I would

like to open to you the life history of this defendant. I would like to show you its fountain seats of virtue which for thirty-six years overtowered all clouds of suspicion. I would like to take you through her life history as a student desiring to learn it from beginning to end and stand by you when you read the last chapter except one, for I know I would hear from your lips a statement of approval that would come with such spontaneity and emphasis as to demonstrate no misgivings as to what your judgment of her character was and is; and then after reading the next to the last chapter, I should invite you to again read the last one. After reading the last one which starts with her fall, you would, after reading a couple of lines, turn to me and say: "Why, this is not the same woman. This chapter deals with crime, dissipation, disgrace, while all the other chapters constituting almost a complete history of the human life are replete with great literary achievements, acts of benevolence, kindness, and womanly charm. You cannot make me believe that the central figure in this chapter is the same ladylike woman and talented student that I found in all the other chapters." But I assure you that she is; that that poor, frail teacher who sits here now, and has for days, is the same ladylike woman and talented student you found in all the other chapters. But you are still doubtful. That Doubting Thomas, you won't believe until you thrust your hand in her self-inflicted wounds. You see then where they are real. You are, however, persuaded that the last chapter is from real life, though it reads like fiction. Doubt still lingers, for the change is too pronounced and rapid to be real. You cannot believe the story, even though assured it is true.

You read on until that life's story takes you to the cell where the windows are barred with iron and then to this court room where you twelve sit in judgment upon the life whose history you just read. Do you believe that this young woman who grew to maidenhood with only books as her companions, who passed through all the grades in the school of the little city where she was born, who thereafter fitted herself for a teacher in both normal schools and university, where her

devotion to books was so marked and her aptness in learning was so marvelous that it attracted the attenion of all people, is the same little, frail creature who sits here now downcast, sorrowful, remorseful, dejected? Can you believe in such a transition?

But, she is not the first woman to fall. You remember the story of Paul stoning Stephen. Paul went to Damascus and he had a vision and he came back and he wrote something which mankind has been reading for nineteen centuries. Now, was Paul, the leader of the murderous mob, the same person that Paul, the Christian missionary was? Was David, the big hearted father of Absalom, the same David that debauched Uriah's wife and plotted successfully the murder of her husband, his own best friend? Don't tell me that man is the architect of his own virtue, for he is not. The leopard can change its spots, the eagle its beak, the rainbow its color, as easily as man can throw off his inherited traits. Unconsciously they manifest themselves even when he tries to suppress them. They are part and parcel of him and he cannot get away from the natural manifestations of them, no matter how he may try.

Who is free from sin? Whose character is absolutely pure and undefiled? "Let he who is without sin cast the first stone." Are you twelve sitting before me willing to have the searchlight of investigation turned on all your private thoughts and acts and an X-ray picture of them made and hung up in this court room, exposed to the rude gaze of the curious multitude that assemble here? "Let him without sin cast the first stone." And let him who has lived an angelic life be the first one for the X-ray man; but before doing it let him assure himself that in the excitement of the moment he has not overlooked some recess in his brain where the devil has been roosting serenely for years.

The implements used to make character, to give character, are such and only such as our ancestors had. If the implements our ancestors used were defective, the workmanship in our character will also be defective. Grace Lusk built upon the sands of inherited mental frailty and the winds of seduction

came and beat around her structure and it went down with a tragic crash; and now she is censured because she did not build better and wiser than she did, although all admit that she built the best she knew how.

Censure her, gentlemen of the jury? The pangs of remorse, more torturing than ten thousand infernos, are doing it now. Only a few years ago she looked back over a spotless life and forward to a glorious future. The masters of learning paid homage to her talents. She lived in an atmosphere that was pure in morals and pure in language and pure in obedience to law. The doors of the most esoteric and learned opened to her and praised her accomplishments. From this high pedestal she fell—fell because she was too weak to stand. I think it was Moore who said: "This wretched brain of mine gave way and I became a wreck, at random, drifting without one glimpse of reason or of heaven." "When the senses are o'erstrung," says another, "the thoughts fly out in mad confusion as if charged with the duty of destruction."

Such appears to have been the condition of Grace Lusk's mind on that fateful June afternoon when one life was extinguished and her own almost blasted into eternity. Like Moore, she became a wreck, at random, drifting without one glimpse of reason or of heaven.

Think of it! The deadly weapon fired at close range refused to perform its functions. The bullets plowed their way through the body, dodging as if afraid to follow the path newly made to the vital spot. She miraculously escaped death, only to live to endure horrors infinitely worse than death. And now they try to convince you twelve that the brain of the actress was normal during these months when each snap of the trigger clicked with almost certain doom to a human life.

Frantically she ran her fingers over her own heart to make sure that the last snap of the trigger would not miss the mark. She stood there looking eternity smilingly in the face, the blood gushing from her self-inflicted wound, a martyr to the lust of a degraded and brutal man. I feel the lack of power to describe the agonies through which she passed—

the ten thousand hells that burned incessantly about her brain.

The Johnstown dam stood the mountain torrents and freshets for years and the people below lived quietly and peacefully in their little city, never for a moment dreaming there would be any danger of it giving away; but one day the south fork of the Conemugh River beat against that dam; its walls cracked and tumbled and gave away by reason of the pressure of those waters; those unchained waters rushed in tremendous volumes down the mountain side, struck the city of Johnstown and swept five thousand souls into eternity. Now, that river was harnessed by the best engineering skill that money could procure. It simply set its teeth and said: "I won't be chained by man;" broke those fetters of steel and concrete as if they were tissue paper and threw herself with tremendous fury upon a city of twenty thousand souls, one-fourth of whom she swallowed up in her remorseless greed. So this girl built her dam to hold in check these sinister influences which permeate all human character. After working on them for thirty-six years without an hour's rest, she pronounced it safe. Like the people of Johnstown, she sat believing that there was not any danger that the flood of passion and love would ever be strong enough to wash away that dam. But she was only a child, only a human being. She did not know that the flood of sympathy and love would strike that dam and wash it out, leaving her bereft of everything that makes womanhood noble.

Gentlemen, I am going to recite to you the salient features of this case though it will be done somewhat at the expense of repetition.

You start with a pure and undefiled womanhood whom you take along with you in your deliberations as a companion, in your minds for a period of thirty-six years. Then you come to the crossing of the serpent's trail; and there were no signboards up that would warn her as you see up at the railroad crossings. You come to the crossing of the

trail. You bring into her life an entirely new element, a new thing, something she never had experience with before. You start her out in her career from babyhood with the line predisposed to insanity. Keep that mind with you all the time. You take that along with you in your deliberations. The testimony of experts is that the laws of heredity carry the mental infirmities of the parent down into the child and that is especially true where it exists on both sides of the house. Now, those two things you take with you. You also take with you that the whole experience, the whole panorama of life, so far as laid out, was laid out for the purpose of reaching a single goal, perfection as a teacher; not perfection as a housewife. And to that end and with that object in view, her whole life's energies had been centered.

Then you apply to these things your own experience and observation, and you will say to yourself: "Does my observation and experience lead me to believe that a life, such as I am now considering, turns out to be the life of a criminal unless something gives out in the brain? Rummage around through the experiences you have had, and find if my statement is not true; that is, that no person with her mentality—I mean, her disposition and her kindness, of her aims and ambitions, ever became a criminal in the manner she has without the giving out of some part of the mind. How could it happen? It is the beating of the waters against the dam. She thought, she believed, she was safe. She had tolerated no thoughts which would render her unsafe. She had sought the companionship of no one. No tempter had run across her pathway to rob her. Wasn't this poor, frail girl justified in believing that she had built her character upon a rock and that it would stand as long as the breath of life remained? She never had it tested before in the way it was tested by Roberts. Every test that had been applied to it up until she arrived at the age of thirty-six years she withstood. If you had accomplished everything along a certain line until you reached the age of

thirty-six you would believe and you would be justified in entertaining the belief, that you could carry it through to the end. If you had lived a spotless life and your whole ambition was not to deal with the groveling and the low, but with the educated and the high and the Christian, you would believe that you could carry that resolve to the end of your life. You might not be able to do it. The tempter might come in. He might get you away from that resolution. He would not do it if your mind was right. If your mind were diseased he might do it provided it were diseased enough and the invitation to change your course did not open up avenues of horror so revolting that you could not contemplate them.

Now, you are going to take into your jury room with you in your deliberations this pure character for thirty-six years, and then you are going to say in thinking how she fell: What was there in the mentalities of her parents that would be likely to cause her to fall? And then you will recall the testimony of the witnesses who told all about the peculiarities of both the father and the mother and you will remember how Dr. Wegge hesitated and did not want to answer and said he was nonplussed when the question was asked him if certain manifestations did not indicate a diseased mentality on the part of one of the parents. You will remember how absolutely every alienist testified that diseased mentalities are handed down from parent to child. Consider it in connection with the reasons for her fall and in connection with the determination of the question of whether she was of sufficient mentality to distinguish right from wrong. But the other side will probably say: "We have got to keep these sirens away from our homes"—as if this poor, frail girl came within that designation. Is there any danger that any such woman, lovable in character as she was, will invade the home of any man, if the man leaves her alone? Can you see any reason for alarm along that score in your home? Do you know of any breastwork that it is necessary for you to build in order to prevent that woman

from doing to you what Dr. Roberts tried to lead you to believe this unfortunate creature did to him? Man is the bulwark of the home. That home will never be ruined from his side if he is a man, not a brute. No, there is no danger of those things. And then we will go on and pick up these horrible letters. That they are horrible, nobody tries to dispute. How different from the schoolgirl's letters to Winifred Wymans are the outpourings of Grace Lusk's mind adulterated with the debauchery put in there by Dr. Roberts! The other letters written to him were the result of a mind poisoned with brutal thoughts instilled into it by this degraded brutal man. From the moment he won her affection, her sympathy, by disgracefully challenging the love of his lawful wife, she was his, a slave to his passions, a worshipper at the shrine of his iniquity. Whatever he wanted her to do she did, no matter how grossly lewd, no matter how repellant to her once pure nature. Step by step he pulled her down until he got her to the bottom; and when he had her in the pit of despair, bereft of virtue, the highest prized of all the gifts God gave to her, he coldly tossed her aside, turned back to his lawful wife and with the lie on his tongue incited the act which brought the tragedy. Truly the wages of sin are death. The Wymans letter represents the schoolgirl, Grace Lusk. She goes down to his low, lewd level and indulges in the language he understands the best. When you go out and tell a story to a young girl of the coldness in your home, of the want of sympathy and love in your wife and keep pouring that story in her ears until the fountains of sympathy commence to bubble up and you win the love of such a person by such a course, I tell you you have aroused a condition there which, when suddenly broken off, may well eventuate in a calamity such as we are trying now. You have aroused passions and feelings that were unknown to that person. You have taught that person to think differently from what she had been in the habit of thinking. You have taught her to believe that there is no sanctity in the home; that it is nothing

but a cold, legal bond that unites one person to the other. Think of his affecting craving for someone to love him, to cheer his life and to be his companion! Gentlemen of the jury, these were the mysterious spirits that played upon the strings of that infinitely mysterious instrument, Grace Lusk's soul. Then it brought confusion like a mighty river washing away the collected virtues of thirty-five years of undefiled maidenhood, breaking her upon the rocks that she had used to dam up her character and prevent just such invasions as occurred at this time. Oh, it is hard work when you consider the beginning, and this period in the life of this girl. She is not your daughter. She is somebody's daughter. Maybe you have one. Maybe you are hoping that you will never have occasion to offer a word of apology in behalf of that daughter's conduct. Don't you think Dr. Lusk lived for thirty-six years in that same frame of mind? He never dreamed for a moment that the hour would ever come when he would have to offer one word of apology or present a single extenuating circumstance in mitigation of what his daughter might do. But he is here now, aged, weak, broken-hearted. In his sight and as he views the situation, that girl is invested with every characteristic that goes to make up noble womanhood. He came here not to tell the story of her inheritance or to tell you about his mental weakness and the mental weakness of the mother. He came here to be where you would like to be if your daughter occupied that place. The parental affection which binds parent and child would impel you to sit by the side of the unfortunate daughter; and especially would that be true if you were conscious all the while that her fall was largely due to the mentality which she inherited from you? He bears the weight of her burden because he, even more than the alienists, knows the weak mind, the diseased mind, that that poor girl inherited from both father and mother.

He is performing the sad, sad duty of a loving parent, a duty which is always performed by every father and every mother imbued with the spirit of paternal and maternal love.

You have a duty to perform too. It is not a pleasant one. It is hard. You have got on the one side the State clamoring for a verdict of murder in the first degree; that is, that she coolly, deliberately and with malice aforethought, killed and murdered Mrs. Roberts; that she did it in a cool state of the blood; and that she did it without being infuriated; that it was a calculated, coldblooded killing. That is what the State contends for.

In a letter to Winifred Wymans written on the day of the tragedy the defendant talks of adopting a Belgian babe and those things which sway the emotions, the noblest emotions in man, those beautiful emotions that you and I never fail to admire and never fail to honor, appear in that letter to Winifred Wymans. Do those beautiful sentiments, those beautiful exhibitions of the desires of the heart indicate that at that time that same heart was nursing the desire to commit coldblooded murder? Take those facts into consideration. Give them the full measure of consideration which their nature demands. I cannot see wherein there has been omitted any matter or fact which in all human probability might have a bearing upon this case. I imagine that counsel who will follow me will pick up these contaminated letters, letters the outcroppings of a debased mind, and argue from them that this defendant was the kind of a person the langauge of those letters seem to indicate that she was. I cannot understand for the life of me how the person who indited the beautiful distribution of her belongings, who wrote it out distributing her little keepsakes among her friends, could turn around and in the next breath write that long typewritten letter wherein the words "triangle" are used. How could she do it if she were normally minded? How could the brain that was thinking about the Belgian child that had in mind such beautiful things, be transformed to the gross lewdness that appeared in that letter, the one going out to a friend expressing sentiments which touch the human heart, the other, never mailed, expressing sentiments from which you and I revolt. The two

are not written far apart; the one expressing the revolting sentiments having been written almost simultaneously with the document apportioning her little belongings amongst her friends. There must have come a change. You find it written out apparently with deliberation and yet it was never mailed. What came over the mind of the writer? Did the beautiful thoughts that were expressed in that instrument distributing her little keepsakes among her friends stand and revile the brutal, degrading and inhuman thoughts that you find in Exhibits 82, 83 and 84? Why were they not sent to Mrs. Roberts? Was there not a rational moment after the writing of this letter represented by these exhibits, in which Grace Lusk was able to apply to that letter the reasoning, the sentiment, the ennobling principles which had guided her life for thirty-six years? Then the next question arises: If that be true, why was not the letter torn up; why was such a letter left among the documents and letters of this woman? In reason, you cannot say that that was a tribute to the high principles of morality for which she stood for thirty-six years. If the mind had been like it was for thirty-six years, that letter never would have been written. The fact that it was written is a circumstance infinitely more persuasive than the testimony of alienists. Would she have dreamed of writing that letter at the age of thirty-six years? And she gets to the age of thirty-nine years three years afterwards and she sits down at her typewriter and writes a letter so repugnant to every principle she ever stood for, so contrary to her nature, so at war with all the things that she held near and dear to her that you cannot explain it at this time upon any theory other than a diseased, morbid mind. A normal mind doesn't write such things. A normal mind doesn't carefully preserve those things among its archives. A normal mind doesn't leave those things where they are likely to fall under the eye of the public. At that time she was contemplating the taking of her own life. At that time she was thinking of sending her soul to its Maker. She wanted to go there leaving behind the pure and unadulterated reputation she

had earned during thirty-six years of undefiled maidenhood; and she writes a letter the nature of which was well calculated to rob that reputation of every element of greatness, of every element of endearment and to contaminate it so that it might appear that the persons looking through the documents that are left when she passed away might draw the inference that this girl was a debauched, depraved and craven wreck.

Now, you must look at that letter from the standpoint of the fact that it was to be left among her effects when her life was no more. Tell me that Grace Lusk, the noble schoolteacher, the talented, graceful woman, the woman who had sought the companionship of the purest and best women of the state, if normally minded intended to leave a relic of that kind behind her? She wanted to leave among her associates the appearance of a spotless life. She wanted to go to her last resting place the honored and respected teacher she had been through life. That would be the natural desire. That desire would manifest itself in the natural way if she were normal minded. Not being normal minded, you find among her effects letters, which, read according to their plain import, make her a fiend in human form. Do normal minds do those things? Do normal minds toy with their own reputations in that way? Do normal minds asperse their own character? Do normal minds leave behind them such evidence as to cast a shadow over their whole life? No, that letter is the outcrop of an abnormal mind. Compare it with the letter where she says: "I want to adopt a Belgian child because I am poor and it don't cost me so much to keep it." And then immediately turning around and disgracing herself and branding herself with the mark of Cain which would stick to her memory as long as the most cherished friend would entertain recollections of her existence. That is the act of a crazed and infuriated mind. And then think of the language she uses, so repellant to her once pure nature, so different from that which she had manifested while in Stoughton, as a schoolgirl, in White-

water at the Normal School, in Milwaukee, on her trips to Europe to study and inspect and report upon the school systems in the most erudite centers of the old world. Do you believe that that letter was written by a sane woman? Do you believe that this talented school-teacher who had won the love and affection of the greatest educators of this state, coolly designed to leave as a relic of her fleeting existence a document that would tarnish her reputation so black that it would repel every friend that wanted to take a glance at it for as long as it lived? Do you believe it? If you do, you have a peculiar idea of the operations of the human mind. Preparing for death, preparing to snuff out the life, preparing for the most serious of consequences that must befall all humanity! And then she wanted to leave behind her a letter covering her with disgrace and shame, so that the world might read it and thereby take from a glorious career the many wonderful achievements which had brought the actor to the highest pinnacle of educational achievements and recognition that a woman could hope to attain.

Gentlemen of the jury, when you go to your jury room you will have all these facts and circumstances to consider. It is not every swallow that warrants the belief that springtime has come; so it is not every morsel of evidence that warrants the conviction as to which way a case ought to be decided. You have for thirty-six years a pure character; you have got the serpent's trail and its crossing; you have got the diseased mind; you have got the indicia of the diseased mind in these grewsome letters which I have not the slightest doubt will be rolled under the tongue of counsel who is to follow me as a delicious morsel. When you hear him dwelling upon those, just go over in your mind that thirty-six years of pure life, and say: "It is contrary to human experience that such a life should end in this way." Human experience is that such a life goes cheerfully on in the even tenor of its ways until death removes the person living it. Ordinarily it would make no change, but and except there was something wrong in the mind of the indi-

vidual who was running that life. If the brain were diseased, and the conditions which we claim prevailed when the two shots were fired at Mrs. Roberts existed in fact, then it don't make the slightest particle of difference that her mental aberration at that time and the refusal of mind to operate at that time, were brought about by intense anger or shame or otherwise. If that mind were diseased and reason dethroned you are not concerned about the elements that produced that condition. All you are concerned about is this: Was reason, in fact, dethroned at the time these bullets were shot? It don't make any difference if it was brought about largely by reason of her illegal relations with Dr. Roberts; but if, as a matter of fact, reason had gone to the winds when these bullets were discharged from that revolver, then this defendant is not guilty because insane and irresponsible for her acts.

I don't recall a case of this length that I have ever tried where I received closer and better attention. It is a tribute to me, regardless of how you decide this case; and I want here and now to thank each and every one of you for the very kind, considerate attention you have given to this case; and whatever verdict you may bring in, even though it may not be entirely satisfactory to me, I will go away from Waukesha with the consciousness that the twelve men before me have performed their duty as they saw it by the light of the evidence.

Don't be in a hurry to perform your duty. Deliberate upon it. Give it the consideration its nature is entitled to. You will be wandering around in a maze of doubt. You will hear conflicting expressions upon the evidence by opposing counsel; but, after all, it is for you in deciding the facts to decide whether it is a case of murder in the first degree, murder in the second degree, manslaughter in the third degree, not guilty, or not guilty because insane. It is for you to determine that question yourselves and there is not another human being on the face of the earth that can do that except you twelve. What one among you is going to be able to say

that she is guilty, without having the words stick in his throat and his conscience goad him forever afterward? Where is the man in the twelve who is going to prepare that fatal hemlock for this unfortunate girl and put the hasp on her arm? I will leave it to you.

MR. CORRIGAN FOR THE STATE.

Mr. Corrigan. Gentlemen of the Jury: The representatives of the State of Wisconsin came into the trial of this case fully conscious of the fact that they did not have a pleasant duty to perform. As the representative of the State now delegated to close this case, I am fully aware that my duty is, in some of its aspects, disagreeable. However, I shall meet it with all the honor and courage at my command.

My duty in behalf of the State is not materially different from the duty of each and every one of you, for we are each a part of the machinery of justice under the law of our State, to enforce the law and protect society against crime.

We have heard a great deal about sympathy. I do not know, gentlemen of the jury, of any man who has a deeper or more abiding sympathy in his heart for any person who has done wrong, be it man or woman, than I have. I doubt if there is any living human being who indulges greater sympathy than I feel this minute for this defendant. I believe you appreciate that in the light of my conduct in this trial. But it is your duty, the duty of each and every one of you, as it is my duty here, to do that which is right. We must put steel jackets on ourselves that we may not fail.

I do not want any verdict in this case in behalf of the State, for the sake of any mere personal victory. If I had one cell in my brain that conceived any such ambition, I would be ashamed of myself, not only now, but during the life God gives me to bear my further burdens, and perform my further duties.

We are living, gentlemen of the jury, in a country where human life is held to be the greatest of all human rights; in

a nation that regards the life of a human being more sacred, more precious, than any other God-given thing. We are living at a time and in a generation, when, because the lives of American freemen have been murderously taken on the world's highways of commerce, we have been carried into the worst holocaust of history. The people of our own dear America so highly regard human life that we stand ready to make every sacrifice of blood and treasure to punish for its taking. We have but to live to those high ideals to perform our duty in this case.

This is not a complex case. True, it is an important case. It is important to the State of Wisconsin; it is important to its citizenship; but there is no complexity about the essential and vital facts here. This case is a simple A. B. C. proposition.

We have heard here a great deal about virtue. Tributes have been paid to the virtue of womanhood. With all those sentiments expressed so feelingly, I agree. We have heard profound appeals for sympathy, and with those I agree. Counsel have indulged in tirades against Dr. Roberts, and in scathing denunciation of his criminal conduct with this defendant. With most of that I agree. If anyone thinks I shall stand before you to justify his actions with this defendant, he will be as greatly mistaken as he would be if he should conceive the notion that I shall defend her actions with him.

We have heard introduced into the arguments in this case the "little girl," the diamond rings, and the limousines. Why? Where is the "little girl," and what have diamond rings and limousines to do with this case? Their plan is to make that which is an A. B. C. proposition, a complex and entangled one.

There is one thing, however, that we have not heard about. I shall not drag it into this case because I seek to arouse any prejudice, and I caution you to that end, but I shall tell you, gentlemen of the jury, that as surely as you sit there and I stand here, there is a picture that has not been painted. We haven't heard anything in this case about the little grass-covered grave up there on the sunny hillside, where lie the

sacred remains of the victim of this tragedy; she who in life, counsel is obliged to say, was an exalted, able, and a noble woman. We have not heard very much in the arguments of counsel about the pathway of those bullets which separated a soul from its earthly abiding place, and gave it flight heavenward. We have heard little of the fact that a life was blotted out in its prime, at the time of its greatest usefulness to society—a life which God had given to the service of humanity.

The last counsel speaking for the defense told you that I would attack the reputation of this poor woman who is on trial. The first one made no such statement, because he knows me better. I do not want—the State of Wisconsin does not want—a conviction in this case because of any wrong that Grace Lusk committed with Dr. Roberts during those two years of secret intimacy. Roberts is not on trial here for that, nor is she on trial here for that. The history of their vulgar performances has been disclosed in this case, not because we desired to attack her reputation. We do not seek or ask her conviction because of her record. She has made her own reputation and she has recorded it in her own handwriting. The defendant and Dr. Roberts, both exercising skill and strategy, had been able to keep their intimate and illicit relations a secret for over two long years. This terrible tragedy that blotted out this life, tore from this guilty pair their hidden secret, and with it their cherished reputations.

But the only purpose those facts have in this case is to explain the reason for this crime—the motive. They disclose the reason for the forming of the intent to commit the tragedy. That is all. We do not want her conviction just because she proved to be a bad woman during those two years. I shall not even condemn her, but I do pity her, for her wickedness which led to this tragedy.

We are trying a murder case here, and if we can sweep these vulgar cobwebs from our minds, our task is easy, and our duty is plain.

Now, we have heard a great deal in this case, in the arguments of counsel upon the other side, about a romantic court-

ship or love affair. Why, gentlemen of the jury, to hear the counsel on the other side, with all their pleas for sympathy, all their gems of brilliancy about virtue and love, and all its sacredness and blessedness, you would think that this affair between these two folks was made in heaven. But that is just a word picture. There are no facts in this case to justify such argument. The fact of the matter is, under the evidence in this case—and that is what we are to abide by, what I am bound by, and shall be bound by—that this love affair never had a holy or sacred thought to sustain it. It started in defendant's office in the Y. M. C. A. Building, right in her own schoolroom. I am going to take her construction of what happened there. I don't know whether it is the true one or not, but it is at least fair to her to take her construction of it. I want to be fair and I am going to put myself in a jacket of steel to keep myself fair.

She says that he leaned over the desk and kissed her. Now, remember she was not a little girl. That is all nonsense. She was a woman, a woman of broad and comprehensive training, a woman of accomplishment, a woman who has been abroad, and a University graduate; a school teacher, thirty-six or thirty-seven years of age, as she sat at that desk. There was no little girl about it at all. She did not even make the time-worn protest of a willing maid, but merely said, when he kissed her, "You ought not to do that, because you are a married man." Then she got up, and they embraced and kissed each other. Now, that is a wonderful romance, isn't it?

I haven't heard anything in the testimony about the alluring tales counsel talked about that happened before that kiss. Their actions were commonplace amongst the vulgar, and scandalous, to say the least. Soon after this first kiss, they went to Chicago. Now, blot out of this case, for the sake of fair argument, the invitation to go that Dr. Roberts claims he received from her. Be fair with her. Take that out of the case, believe her side of the story—that he invited her after this kiss, when she said: "You must not do that, because you are a married man." She didn't have to go to

Chicago. There was little time for these "alluring tales" that counsel talked about. She knew what she was doing when she went to Chicago, and yet you would think, to hear counsel on the other side, that she was some little country girl about sixteen years of age who had been lured off down to Chicago by some old timer who alluringly told her about the big elephant she would see when she arrived there.

There is another circumstance that takes all the romance out of this "soul mate" business. I will not speak in detail about it, because there is no use in being foul. We have heard this thing all the way through, and you know it just as well as I do. It will suffice to ask, where is the deep and abiding love that can have its origin or celebration in a single seated automobile, out on a dark country highway? Talk about romance, and love, and virtue, and sympathy, and pity. It is all a nightmare to decency. This relation continued from that time on. In that respect their stories agree. Roberts testified that he called her and she called him—that he suggested to her, and she suggested to him. He planned some occasions and she planned others. She testified that they had a mutual agreement that they should do just as he says they did. There is no substantial difference in their respective confessions.

Now, gentlemen of the jury, assume that as a result of this illicit affair between these two folks, Roberts had shot his wife; suppose that he was the one that persisted in having a separation take place in his family, and had taken the foul means that this defendant chose, to eliminate "one corner of the triangle," where would he be? Would he have any defense? Oh, yes! I suppose he could say that he was unconscious during the two or three minutes in which he was doing the shooting; that he was in a state of "automatism," or something of that kind, while the pistol worked automatically, just as defendant's did.

Gentlemen of the Jury, if Roberts would have had no chance under such circumstances, why should the woman in this case be treated differently?

I repeat for the sake of clearness and positiveness that the

story of these foul relations was introduced in this case simply to let us understand the motive for this crime. The evidence shows that this defendant, after nearly two years of designed and mutual secrecy, finally determined that she would find a way, as she says in her own language, in that famous and infamous letter, "to take the throne of Mrs. Roberts." So we have, gentlemen of the jury, and we all know it without statement of greater detail, a motive established in this case. This is the secret chapter that Mr. Clancy left out of the book he wrote during his argument—a secret chapter that covered a period of two years. He expunged this important chapter. We will have to restore it in order to understand the tragic chapter. This restored chapter shows the motive; then when we read the tragic chapter in the light of the motive, we understand the whole book a good deal better than we did when Mr. Clancy reviewed it.

Now, a great deal of time has been spent by counsel upon the alleged differences between the testimony of the defendant and the testimony of Dr. Roberts. I care nothing about that. The relations existed. We don't care who started the affair. It existed. It was between grown-up folks who knew what they were doing, and they were both parties to the crimes that they committed. They were both in it. They were mutually in it and desired to be in it, as is plainly manifested by the letters of both. Of course, the defendant, a woman of great ability, of great training and education, a woman who understands and can exemplify the dramatic art, makes a much different impression in telling the same story that Dr. Roberts told. Dr. Roberts, cold blooded, cast steel fellow that he is, horrified with all these awful things, that make a man shake in his boots, tells his story in such a way that it sounds wholly different. But what are the real differences in these stories?

The differences are these: First, he says he does not know who kissed first. I think he does, but what figure does it cut? The motive is just as plain in either event. Second, there is a difference as to who proposed the first trip to Chicago, but how does that effect the motive for this crime?

Third, there is a difference between them as to the degree of love manifested by Roberts. She says he continually told her that he loved her ten thousand times more than he did anyone else in the world; and he says he told her he loved her, and he thought once that he did. On the other hand, the letters that he had written in 1915, when this situation between them was the warmest it was at any time, are cold blooded letters. They read just like the love letters you might expect a horse doctor to write. However, her letters show she wanted him in spite of his coolness, and the motive is still as certain and plain as the sun on a cloudless day.

Now, there is another point that they differ on, and that is with respect to his efforts to get away. The letters that he writes prove that he was trying to get away. But what difference does it make about this murder whether he was or was not? The relations existed between them, and it is very manifest that she wanted him, whether he was trying to get away or not; it is equally clear that she designed and calculated and laid plans to get him, whether he wanted to be caught or not. Why, she openly states her motive in this letter she wrote on the typewriter, wherein she said that one point of this triangle ought to be removed, and that the two who remained should be the ones whose love was mutual. You cannot read that letter without clearly getting the idea, contrary to her testimony upon this witness stand, that the person in that triangle the defendant desired removed was none other than Mrs. Roberts.

This motive developed slowly but surely; both of these people bore good reputations before this affair of theirs started. They both wanted to retain those reputations, and they both tried to by keeping these relations secret. They talked about secrecy. They agreed not to sign letters. She wrote a long letter to him about a trip which was to be taken to Chicago, guarding him for the sake of caution—urging him to use caution in order to keep these relations secret. Why? Because, up to that time, she wanted and desired secrecy; she wanted to preserve her reputation. But commencing about the 9th of March, 1917, apparently at a time when the

doctor was trying to put a stop to these criminal relations, she started to force the issue. Thus developed the motive for this tragedy.

But I will tell you, gentlemen of the jury, this affair between these folks was no romance or real love match. It was vulgar, and they both knew it. Their correspondence and their methods show that they both knew it. It was just plain vulgarity upon both sides. It was a nightmare.

It presents a situation quite parallel to that of the city farmer who used a tractor and a gang-plow to cultivate the violet bed. These people made a violet bed for themselves, and cultivated it with like folly, but they had no right to expect, and neither one did expect, that the violets that grew in that bed would all be blue "because blue happened to be a pretty color."

In the course of events, to-wit: on March 9th, 1917, when they were at war about the trip to Chicago—he having refused to go—she wrote this foul and infamous letter. The defendant told Roberts she had written such a letter, and that she had it ready to send to Mrs. Roberts if he did not agree to go. Of course he went. She told him afterwards that she had kept that letter; and true enough, it was found in her room immediately after the tragedy.

Now, gentlemen of the jury, I am not going to read the whole of that letter. I am not going to unload these "choice morsels" from under my tongue that counsel talked about, but I am going to read some parts of it—not the most vulgar ones by any means. Now, mind you, gentlemen of the jury, she claims upon this witness stand that she was not pursuing Dr. Roberts. But she says in this letter of March 9th, in referring to the subject of pursuit—"I thought it was all quite a good joke; in fact, it would not have occurred to me to take the situation seriously if one night at the Baptist Church at some supper or fair, you had not come up to us when we were talking in the most innocent fashion imaginable, and rushed him away. You didn't do it in a courteous manner—well, no, rather—I vowed thereupon to get even with you for your discourtesy, and I have."

And, gentlemen of the jury, she told at great length and with deliberation in this letter just how she had gotten even. However vulgar this letter may be, it has the virtue of being clear, plain and unambiguous. It is written in intelligible and understandable language. It is plain English. It is a sorry thing that it could not have been misunderstood. She deliberately put it down with her own typewriter, in her own room and in black and white, and it is here now to tell the story of the simple, though vulgar truth, the motive for the crime.

On this trial, after backing away and evading, she swore that this statement in her letter, that she had gotten even, was not the truth. Why should she tell an untruth then? Why would she not tell the truth about it to Mrs. Roberts, if she wanted to lay the foundation for the separation of that family? The truth would separate them, if it were told. She wanted Mrs. Roberts to understand that she had been getting even with her because of some discourtesy that Mrs. Roberts, according to defendant's assertion, had shown her at the Baptist social, so she says: "I vowed thereupon to get even with you for your discourtesy, and I have."

What had she done to get even? She had borne these relations to Dr. Roberts. That is manifest. And this letter says so. Then she says: "Only I hurt myself in doing so." I asked her on the witness stand what she meant by that, and then, notwithstanding her denial that she had gotten even, she gave the answer, which is no doubt the truth: "I referred to my relations with Dr. Roberts."

Now, gentlemen of the jury, it has been said in the argument for the defense in this case that we have all been sinners. Counsel waved his hand in a complete circle when he said that, so that I was quite sure I was included. His statement accords with my recollection from the time of my early Methodist training. Counsel argued that because we were all sinners, that that ought to work an acquittal in this case. Gentlemen of the jury, if that kind of argument should prevail in our courts, when the lives

of innocent victims have been blotted out through the cruel hand of those designing to kill, what would become of our security? When would your lives be safe? When would the lives of your family, your friends and your fellow citizens be safe? If the religious teacher who uttered that thought ever meant what counsel seems to think, then it was wrong and illogical when it was said, and it has been wrong ever since. But I do not believe it was ever the idea of any pious thinking person, that any such doctrine should prevail in the world. It is contrary to the fundamentals of the land in which we live. It is contrary to the laws we are sworn to enforce; it is antagonistic to all the ideals which have guided humanity since the dawn of civilization.

Now, gentlemen of the jury, I am going to point out to you the facts showing the intent and the deliberation of this defendant in committing this murder. The motive has been sufficiently alluded to, and I think you will hear no more about this unwholesome and vulgar affair, between these two folks, except as necessary in connection with my argument of the insanity issue.

In order to constitute murder in the first degree, there must be some proof that the murder was by a premeditated design to effect the death of the person killed.

Premeditated design does not mean what the argument of counsel might imply, though one of them, at least, stated the rule of law with a reasonable degree of accuracy. Some of the argument that was made, however, does not fit that rule of law. In order to constitute murder in the first degree, the person who commits the murder does not have to go down on the corner of the street and wait for the victim to come along. That would be murder in the first degree, of course, because of the deliberation. But there may be deliberation without any such waiting. A person does not have to spend weeks or days planning in advance, to commit murder with deliberation. Not at all. The question is whether there is deliberation for even an in-

stant, whereby the person who commits the crime has formed the intent to do the act. A person who takes the life of another with a gun is presumed to have intended the result, and to be guilty of murder in the first degree; and if a reasonable doubt is to be created, as to its being that grade of offense, it must be created by the defendant, or by some other evidence in the case sufficient to raise that reasonable doubt.

Now, remember, the intent may be a sudden intent. Merely to be angry does not excuse or lessen in any way the grade of offense, for perhaps a large majority of the acts of murder in the first degree are perpetrated in anger. Merely to be angry is not the "heat of passion" that the law takes cognizance of to lessen the grade of offense. If one were angry, but had the evil intent for an instant of time, even though it were a sudden intent, and he killed, i. e., shot the person in front of him, he is guilty of murder in the first degree. I ask you to follow the Judge of this Court as he instructs you, and you will readily see that the premeditated design is not one that has to be framed a long time in advance, but that it may be a sudden one. All that is required is that the intent be formed before the act. Then you have murder in the first degree.

The first element of murder in the second degree is that it is perpetrated by any act immediately dangerous to other persons. As to that element, this is such a case. The second element is that the act must evince a depraved mind, regardless of human life. That may exist in this case. But the third element is that the act is "without premeditated design to effect death." That is the important thing which distinguishes it from murder in the first degree. If the intent to do the thing is present, it is murder in the first degree. If the act is the result of a depraved mind, perpetrated by an act imminently dangerous to others, and the intent is absent, then it becomes murder in the second degree. The crime involved in this case can scarcely be less than murder in the second degree, as I shall now point out.

Now, manslaughter in the third degree, which is going to be submitted, requires that the killing be in a heat of passion. I have told you that does not in any way mean just mere anger, because many cases of murder in the first degree are perpetrated in anger. "Heat of passion" means a state of mind incompatible with the formation of an intent. It means a case where the intent is not formed, not even for an instant, not even for a second, but where the person is so wholly carried away by anger as to be incapable of forming any intent at all; where he is in such state of mind that it is incompatible with his forming an intent.

Just to illustrate: If I had gone out to one of your homes in the country here, and you and I, for some reason or other, had begun to quarrel, and I walked over to your woodpile, got your axe, and came back and killed you with it, the fact that I had walked over there and got that axe, notwithstanding I was angry, and killed you because I was angry, shows that I had deliberated, and had formed an intent; and I was, therefore, guilty of murder in the first degree. But, if on the other hand, we had been out there in your yard and there was an axe lying there, and for an innocent purpose I had picked the axe up and had it over my shoulder, and you then called me some name, whereupon I flew into a rage, and was in such a rage, such a heat of passion, that my mind was in a state where it was incompatible with the formation of an intent, and I struck and killed you, that would constitute manslaughter in the third degree.

The propositions of fact I now want to state are very important. I want to state them fairly, and in order to do so I have made careful notes of them, so that in the enthusiasm of the moment, I will not be carried away or forget that I am trying a murder case in which it is my duty to protect this defendant as much as it is to represent the State. The first proposition of fact upon which we contend the defendant is guilty of forming the intent to murder is

this: The first shot that was fired into the body of Mrs. Roberts was fired when Mrs. Roberts was in the dining room. We say that because the facts demonstrate it beyond doubt. There was a blood spot in there. The defendant admits remembering that Mrs. Roberts was in about the center of the dining room and had just stepped from the telephone. So we have the blood marks, and we have the defendant's statement. We have the further circumstance that she had just been at the phone, and, fourth, we have her spectacles which were picked up very near that same place.

Here is the parlor, where the body was found, and here is the mark near the table where Chief McKay said he found the glasses. Here is the telephone. Here is the blood mark. So we have the glasses, the blood mark and the defendant's statement as to where Mrs. Roberts was just before the first shot. Therefore I think we can take it as a settled fact in this case that Mrs. Roberts received the first shot in the dining room. This shot was not immediately fatal, because if it had been she could never have left that room. That first shot caused a wound, after which she could readily walk a distance of twenty-four feet. Now, the second shot was in the parlor, because the body was found in the further corner of the parlor, with a large pool of blood near it. It was a shot through the aorta. The aorta was punctured in two places, so as to completely destroy the blood pressure and cut off the supply of blood to the brain. The victim of such a wound would fall in her tracks. Furthermore, we have the fact that there was a trail of blood, illustrated by the marks which you see upon that diagram, which indicate that the woman did travel twenty-four feet before she fell down upon her back and died. That shows, gentlemen of the jury, that this defendant, in spite of her protestations that she does not remember, followed her retreating victim a distance of twenty-four feet between the two shots, not being near enough at either shot to cause any powder burns on the

clothing. The last was not a close shot, but one preceded by the deliberate aim of an expert marksman, who, standing there with that automatic pistol, saw when she shot the first time that her intended victim was still able to walk, and followed that victim with the gun because she was obsessed with the idea of finishing her, and then, after her victim retreated twenty-four feet, fired that last shot into the most vital part of the human body.

This last fact also has important bearing on the insanity issue they have introduced into the case. It shows a mind that is working with reason. She shoots. She sees she does not get her victim. She follows her. Why does she shoot the second time? Because her mind reasons that she has not finished her victim. She shoots the second time and the victim falls on her back. The shot is plainly fatal. Why does she quit firing? Why doesn't she shoot again? Because the mind reasons! Then she thinks it is time for her to finish the job she started out to do, so she went upstairs to take her own life so as to cheat the law; then she would not have to go through an ordeal such as this trial is. The defendant has sworn on this witness stand that she did so reason.

Talk about a mind not tracking that can do that!

Now, there is another proposition on which we stand. I say to you, gentlemen of the jury, that all this talk about her forgetting what happened in the short space of time of from two to five minutes is a plain proposition of convenience. You were entitled to have from her the story of those minutes if she expected to rely upon the defense of heat of passion. Gentlemen of the jury, she is the only living soul that knows just what happened there, because the lips of the victim have been sealed and her soul has taken flight, and she, poor woman, is not here to tell that story. The defendant says that she went upstairs and got the doctor's letters to show Mrs. Roberts, and then and there saw the gun and picked it out of the box and took it down, intending to commit suicide; and that it was then,

after names were called, that she shot Mrs. Roberts. But, gentlemen of the jury, this claim that she makes about going up to get these letters is a ridiculous one, unsupported by either the evidence or common sense, and absolutely disputed, and overwhelmingly so, by the physical facts. Why, gentlemen of the jury, the district attorney of this county, who was sworn to do his duty, found these Roberts letters in these two envelopes in the bottom of a drawer of defendant's desk upstairs without blood stains on them, covered up by miscellaneous papers, keys and trinkets—just such things as would be thrown into such a drawer. They had never been downstairs. They had remained upstairs in the place where they had been kept by this defendant. She didn't go upstairs to get these letters, because if she had, she would have brought them down; and the physical facts show she never did bring them down. She went upstairs after the calling of these names to get that gun, and she took it out of the box. She knew it was loaded, and she took it downstairs concealed in her pocket, because Mrs. Roberts had called her names. This shows the intent and the design which was formed to commit this murder. It shows murder in the first degree, because the intent to kill Mrs. Roberts was formed before she ever went upstairs at all. But the defense argues that she went up there for the letters, and then decided to commit suicide. She was not that fast about suicide. She hesitated to take her own life even after she had shot Mrs. Roberts. She swore it was hard for her to take her own life, and because it was so hard, she waited more than an hour between shots. Why, what would be the sense, gentlemen of the jury, in her going up and getting those letters and bringing them down and showing them to Mrs. Roberts, and then killing herself? And yet every act of her's was performed with reason and deliberation.

Now, there is another proposition in this case that tends to show the design and intent to murder. It is supported by evidence, though I do not think that it is as strong

a proposition as either of the other two already considered. The third proposition is that there was for a long time a premeditated design to get rid of Mrs. Roberts. That appears to have been formed as early as March 9th, as shown by that letter. The plan was to get rid of Mrs. Roberts in some way, not necessarily by killing. The defendant says in that letter, which she wrote on or about March 9th: "While you were sick last winter he was with me every night. He made no secret of the fact that if you had been called to angel land it would be a happy solution of the difficulty. In the eternal triangle the only solution of the problem is the elimination of one character. The two who should remain are those whose affection is mutual."

Eliminate whom? She says on the witness stand, herself. I ask you, gentlemen of the jury, much as you may regret the necessity of reading this letter, to look it over, and see if you can find anything in it which can possibly justify the claim that at the time she wrote this, she intended to commit suicide? I challenge anyone to point to anything in that letter which indicates suicide. On the other hand, it indicates the design and purpose to eliminate Mrs. Roberts in some manner, so that defendant might have what she calls in this letter, "the throne" of Mrs. Roberts.

Now, I am not saying, gentlemen of the jury, that it necessarily follows that when she said the removal of one corner of that triangle was necessary, that she meant murder; but it does show a design, perhaps not then fully planned as to the method of execution, to remove Mrs. Roberts from that "triangle" in some way. It may be that the actual method of accomplishing it did not come to her until the opportunity came on that fatal day when these women were alone together. It may be that it was then that she quite hastily fell upon the method by which she would remove one corner of the triangle, and leave the two, as she claimed, "whose affection is mutual."

Now, with respect to the argument that the crime committed is of no higher grade than manslaughter. I answer

that if there was an intent formed to kill, even though it was a sudden intent, the crime is murder in the first degree. If that intent did not exist, the crime was the result of a depraved mind, and the act was done in a way that was imminently dangerous to others, and that is murder in the second degree. Gentlemen of the jury, I say to you, in the light of the testimony here, that there is no evidence of any such heat of passion as reduces the crime to manslaughter, because the evidence does establish the intent to do this. Besides, it is presumed from the act itself, in the absence of explanation—which the defendant has not given because she has conveniently failed to remember. You were entitled to an explanation from her, and in its absence, there is no evidence whatsoever in this case, of heat of passion. In fact, she denies she was angry at the time of this awful act. I think, however, that she was angry, but I do not think that that anger was any such anger as constitutes "heat of passion" in the law, because the evidence in this case shows that between the time the anger possessed her and the final act of the tragedy, she formed the evil intent, and committed the final act pursuant thereto.

Now, gentlemen of the jury, we have not only the physical facts that establish murder in the first degree, and an admission on the stand that eliminates manslaughter, but we have the fact that she confessed, over and over again, to facts which prove some higher degree of crime.

Let us see: First she wrote this bloody note, from which I read: "This is the work of the man who said he loved me. God forgive me." Forgive her for what? She knew, when she wrote that, what she had done. Then she wrote: "Pay Bianca for the house that I have spoiled." She knew she had shot up and despoiled the house when she wrote that. This brain, that they claim was so befogged that it was completely off the track, was reasoning then, in spite of the fact that she had shot Mrs. Roberts downstairs, and had shot a bullet through her own body upstairs.

Then we have the confessions that were made to Dr. Davies. To him she told in detail the whole story of the tragedy, and within a few minutes after the crime was committed. Why, gentlemen of the jury, if some crime should be committed in your neighborhood, and you went over to the house where it was committed and found a person under circumstances similar to those under which she was found, and talked with such a person the way Dr. Davies did with her, you would know, wouldn't you, what the truth was? That was the best time and place to find out what the truth was. Dr. Davies was impartial and kind to her just as you would be under similar circumstances, and he got the truth first hand. She asked him to write at her dictation, and he wrote: "Dr. Roberts told me again and again that he loved and that he cared for no one but me. He said that his wife" —*His wife!* She had Mrs. Roberts in mind, didn't she? "He said that his wife and he had never cared for one another, and that he cared for me more than anyone else in the world, and he promised me that he would tell her before the 15th of June; and he swore on the Bible." She remembered then, didn't she, of standing that fellow up against the wall of the room at the Hotel Wisconsin, at the point of a gun, and exacting that promise from him while he had his left hand on a Gideon Bible, and his right hand raised heavenward? Wasn't her memory pretty good then—this woman who was so conveniently unconscious for a few minutes while her gun worked automatically? I read on: "I told him if he did not care for me, we would drop it all. When he came back last night I told him that he must tell her, and the only dishonorable thing we were doing was deceiving her." That is just what she wrote in that letter on the 9th of March. What a memory! Mind tracking just the same every day. "I went over to see her last night." Now, how about memory there? "He brought me back through the park. I asked him again if he cared for me, and he said he did. He promised to go home and tell her. I called him up just before Mrs. Roberts came."

Just before Mrs. Roberts came! She remembered, didn't she, that Mrs. Roberts did come? She knew Mrs. Roberts had been there, and she knew, when she dictated this, that she had shot her. "He said over the phone that he had told her he cared for me. He told her I had been chasing him to death, and I was the damndest fool that ever lived." Evidently she remembers the details of the conversation between Mrs. Roberts and herself. "She called me every name"—and then she goes on in all this detail, showing that her mind was working perfectly. "I am leaving money enough. I want B. Mills to be paid for all the damage done to this place. Everything must be paid for very well. Father must see to that. Every debt is listed in my desk"—and it was; and then she gives the address of her dearest friend, Winifred Frey, in California. Besides this, she told over and over and over again her reasons for having committed the crime. That was before she had concluded, as she did at some time afterwards, to tell the story of unconsciousness as a part of her sham defense of insanity.

The most significant thing that happened there was this: When she asked about Mrs. Roberts and was told that Mrs. Roberts was dead, she said: "What will they do to me?" And the doctor said: "Well, they will probably put you in jail." But she says: "No, they won't." On this witness stand she said that she then decided to take her life in order to avoid the ordeal of this trial. There is the nub of it, gentlemen of the jury. She knew that she had killed Mrs. Roberts. She decided to take her life to avoid this ordeal, and that is why she told Dr. Davies that they would not put her in jail. She knew what she was talking about then; and I cannot blame her for so deciding.

Then at the head of the stairs, after she had shot herself the second time, Dr. Davies said to her: "Why did you do this awful thing?" And she said: "She called me such awful names." This clearly meant that she had shot Mrs. Roberts because "she (Mrs. Roberts) called me such awful names." That was why the defendant did that awful thing.

There is a little bit of nonsense in the argument that the "awful thing" she referred to was her suicide. Would she shoot herself because Mrs. Roberts called her names? The awful thing she referred to was the shooting of Mrs. Roberts, because she knew that she had shot her. Then she told Mr. McKay the same story she had told Dr. Davies. Part of the conversation was in the presence of both men. She was then taken to the hospital, and confessed again that the reason she committed this crime was because Mrs. Roberts had called her such awful names. This confession was to the superintendent, Miss Collins.

On the 26th of June, four days after this tragedy, Mr. Steiner, the representative of the United States Department of Justice, went to the hospital with the district attorney and the sheriff of this county, and the following conversation occurred. Counsel says questions and answers were not given, but let me read to you this testimony which shows that the conversation was by question and answer. Mr. Steiner asked: "Did you realize at the time what you were doing?" Just think of that, gentlemen of the jury: "Did you realize at the time what you were doing?" Now, remember the time, four days after the tragedy, before she had developed this scheme of unconsciousness—before this notion of insanity had crept into this case. That was a time when she was still as conscious of what happened as she was when she was talking to Dr. Davies. Besides this, she had had time for reflection and study, but had not as yet planned this fancy defense. He said: "Did you realize at the time what you were doing?" And she answered (and I have the exact language of the witness here): "She said she did." "She said she was in a perfectly sound state of mind at the time she committed the tragedy; that the reason for doing so was because Mrs. Roberts used obscene language in reference to her."

Was she unconscious when this crime was committed, if four days afterwards, before this sham defense of insan-

ity was conceived, she told this story to the representative of the United States Department of Justice? Then she was asked by the district attorney of this county, who was there in his official duty, as he ought to have been, "How did you come to do it?" Well, it was a simple matter then. It has always been a simple matter. It was never anything but an A. B. C. proposition. "How did you come to do it?" And she answered: "Because she called me such awful names." That is just what she said a dozen times on the day of the tragedy. As yet, she hadn't changed her mind. Her memory was working perfectly up to that time. Then she said further: "What I can't understand is how I did it so cool and deliberate." What did she mean? She meant that she went upstairs to get that gun in order to do it. She meant that she followed her victim for that second shot.

Now, she doesn't tell that story any more. She goes on this witness stand, and she not only says that she does not remember what happened at the time of the tragedy, but she also says that she does not remember whether she made these confessions. It seems to me as if whenever it gets uncomfortable for her to remember, she forgets for convenience.

Notwithstanding her trance, her memory is too good about some things. She remembers some things that never happened there in that house. While I do not dispute the fact to be, that Mrs. Roberts gave her a good trimming down there that day, it does not strike me that this woman, who has conveniently forgotten the most important facts that you should have here in order to tell the grade of this crime, is telling the thing just as it happened, when she puts some of those vulgar statements into the conversation of Mrs. Roberts. It sounds as if it were made out of the same cloth that the story of forgetfulness was made from.

I come now, gentlemen of the jury, to especially consider the special plea of insanity.

Counsel for the defense have been very strategic in their

argument of that question. They have tried to confuse the terms sanity and normality. Now, look out for that, and watch the charge of the Court. Insanity under the law of Wisconsin is something more than abnormality. The test of insanity here is the capacity to distinguish between right and wrong. If abnormality were the test, a great many of us who are thoroughly responsible for our acts, and who know the difference between right and wrong, could be excused from punishment for crime, because in some particular peculiarity of mind, we were made different from somebody else, or different from the great mass of mankind. We might be excused from responsibility for having passions; we might be exonerated from crime for having a mind in which anger is easily aroused; a bad disposition, or a revengeful temperament might let us go scot free for anything, and yet all of those characteristics, and thousands of others, in greater or less degree, go to make up all of our dispositions.

The defendant is, no doubt, possessed of a quick temper and despotic disposition. That is a sad circumstance, for which she probably is not fully to blame. There is a doctrine of one of the great churches that we are only held to the grace which God gave us in the beginning. That may help us when we come to face our Maker. But it is not the law which governs us in civil communities. We have a duty here, long before we have to face our Maker, to protect society from crime, and to protect human life as the most sacred thing in the world. So our law provides that responsibility is to be tested here by the capacity to distinguish between right and wrong. Therefore, don't be confused by the circumstance that the defendant in this case may, through her own fault, or partially through her own fault, and partly by heredity, be a somewhat different person temperamentally than you or some others may be. To those who are temperamentally like her, and who are easy to anger, if that be the case with her, we must, in the performance of our duty, hold out an example so that all

such will be more likely to control their temper, to the end that society may be protected, and the dignity of the law upheld.

The defense contends that this woman is insane because she planned to commit suicide. I don't know whether her plans for suicide were the same kind of a bluff that she asserts she worked at her meeting with Dr. Roberts at the Hotel Wisconsin; but I do know this, and you know it: those records that have been offered here showing the details of that plan of suicide show the acts of a reasoning mind—a mind not controlled by violence—a mind which had decided, for a reason, to take her own life, if she had so decided. You will recall that she says she made those plans about the 24th of May. The inventory bears the date of the 24th of May, in fact. The pen-written part was evidently put on afterwards to indicate her wish as to the division of her belongings. The will was made June 1st, though it was in contemplation before. She made special effort to complete it on the morning of June 1st. Why June 1st? Because, gentlemen of the jury, it was at five o'clock of the afternoon of that day that she was to meet Dr. Roberts at the Hotel Wisconsin; and if she was anticipating suicide at all, and if it was not a mere bluff with reference to Roberts, as she says, then, gentlemen of the jury, it was the design in her heart when she arranged that meeting to deliberately put him in the corner of that room under the pistol, and if he did not come across with the promise that she was insisting he should make in order to break up his home and make a home for her, then he was to be shot down, and she would follow with her own suicide.

If she planned that, she did it deliberately; and if she did it, she did it for a reason. If she did it, she didn't have delusions. She does not claim any trance-like state then. She remembers all the details. She remembers she pulled the gun out of the drawer, where she had purposely put it in advance, because Dr. Roberts said that it was impos-

sible for him to make the promise which she demanded. That is the reason why she went and got the gun out of the drawer. That is why she put it on him, put him under the gun, and swore him to the promise so exacted. There might have been a different case than this. Two corners of the triangle might have been eliminated and the noble, good-hearted and exalted woman would have been left for her service in the world which God Almighty ordained she should give to society. But she did not shoot Dr. Roberts or herself. Why? Because she got what she was after. She got the promise. When she got the promise, she wanted to have that promise made good. She believed the execution of that promise, the giving of the information such as was contained in that letter of March 9th, written on her own typewriter, would separate those two people, and give her a better chance for the "throne" of Mrs. Roberts.

Now, that was the act of a reasoning mind. Wouldn't that separate Mr. and Mrs. Roberts? Where is the good, noble-hearted woman, that they have justly described Mrs. Roberts to be, that would not move out of her home and discard the husband who, as defendant says in that letter, had "made himself a hypocrite, committed , and done other things." So the defendant, after she had so exacted this promise at the point of the gun, at once commenced to seek condonation of her rather extraordinary methods of love-making, and embraced and gave the Doctor a legacy of kisses, all of which he peaceably acquiesced in because he was a coward, and for that I do not blame him. A kiss is rather less dangerous than a gun, sometimes. That whole affair was a scheme. It was all reasoned out and was the product of a sane mind. The goal in mind was just the thing that would happen in the ordinary family. It might be, of course, that Roberts would not marry her after the home was broken up, but still the chance of his doing so was a good deal improved over what

it was while Mrs. Roberts stayed there; for he did not have any chance for divorce. The defendant says he told her that in the eyes of the law, Mrs. Roberts was a model wife.

Talk about reason! Talk about an insane mind so reasoning! Talk about that being the product of a mind that was not tracking perfectly.

They claim, further, that this attempt at suicide on the day of the tragedy evidences insanity. I say no, because she has told you herself the reason why she wanted to die. Sitting right here on the witness stand, she said she wanted to die because she wanted to avoid the ordeal of this trial, or a trial like it. That is the reasoning of a sane mind. That is the way many minds would reason.

Mr. Clancy truly said, in his argument, that she was facing horrors worse than death; and if Mr. Clancy is right in that statement and Mr. Clancy is of sane mind—and he is—then there was all the reason why she should reason in the same way.

Furthermore, it demonstrates that she was sane, for she admitted on this witness stand that she hesitated about shooting the second shot into her own body because it was a hard thing for her to take her own life.

Furthermore, she says she changed her mind about suicide because of the request of her father. This poor old father had lived to a ripe old age; had practiced his profession successfully; had brought up his family well; had probably gone through many troubles. He loved his daughter as I know I love mine. He cherished the hopeful future. He looked with complacency and happiness upon the past. The sympathy of my heart goes out as deeply to him as it ever has to a living being. He was brought unfortunately to this awful situation. I know it took the heart right out of his life, and stranded his very soul in the gulf of despair. But in his love as a dear old father for the girl that will always be a little girl to him, he argued and pleaded with her to face the trial rather than her Maker. He may have repeated some of the prayers that he taught

her when he held her, as a little girl, upon his knee. She listened to his prayers and arguments, and she became convinced. Do insane minds listen to arguments? Are insane minds convinced by reason? No! They run contrary to reason. So you see, that fact also breaks down their claim of insanity.

Then they argue that she was insane because of sleeplessness; and yet her own statement is that she slept as much as four or five hours in a night.

Why, gentlemen of the jury, the greatest military leader that the world has ever known, Napoleon, slept only five hours a night; and while he was doing it, he changed the whole map of the civilized world; and but for a few errors of judgment, a few mistakes, a few departures from his original plans, due wholly to ambition, he would have written into the fundamental law of the civilized world, principles which would have saved the world from the curse of Prussian Militarism.

The doctors for the defense have given their opinion based on a perverted hypothetical question, that defendant is a paranoiac; that she has original paranoia, which is a continuing, progressing and incurable disease. That means that if she had paranoia on the 21st of June, 1917, or at any time in her life, she has it now worse than she had it then, because if it is a continuing, progressing, incurable disease, that follows as a matter of course.

Well, now, gentlemen of the jury, the Court will instruct you as to the weight of expert evidence, and I want you to listen to those instructions, I want you to stick a pin in them—not in the experts, but in that part of the charge, so that you will retain it clearly in mind. You will find that under the law, you are the judges of this woman's sanity or insanity. They claim she is now insane and worse now than she was then. You have seen her here in the trial. She has gone through an ordeal, the like of which it is seldom the unhappy lot of an individual to go through. She has been compelled to face these letters, and

I am sorry that she ever wrote them. I should a great deal rather that the State never had them; I am sorry it was ever my duty in the prosecution of any case to have to offer such foul things in evidence; but she has faced that ordeal like a major—if that term may be applied to a woman—and I don't mean to apply it in any disrespect. Why, gentlemen of the jury, in my twenty-two years of law practice, a good portion of which has been consumed in the trial of lawsuits, I never saw a man or woman take the witness stand who was superior intellectually, who had stronger brain power, or reasoning power; who had developed a higher grade of strategy in the use of the English language, using the right word in the right place always, than this defendant. She is a profound scholar, a student of literature, a woman developed in brain power as few women are, and rightfully entitled to be classified intellectually and mentally as a charming woman. She insane now? Well, gentlemen of the jury, if she is as perfectly balanced now as she appears after going through this ordeal, after going through this battle for her life here in this court room, after facing these things which she supposed, and had a right to suppose, had it not been for this tragedy, were the secrets of her soul, then they may pile their opinions as high as the canopy of heaven, and they cannot convince men of reason that she did not then have the brain power to distinguish between right and wrong. Remember that you are the judges of that, and I cannot doubt the result, for I know you realize the truth, and have the courage to declare it.

Remember they admit that if she had paranoia then, she has it now; and if she hasn't it now, she never had it, because if she ever did have it, she would still have it.

These changes in the brain that counsel has told about are not flitting things that come this moment and drift away the next, especially if caused by paranoia; and when we find a case where these alleged changes in the brain last only two or three minutes, and then the person gets

completely over them, and remains normal, and can do what this woman has done here on this trial, then it is a pretty silly, as well as a suspicious contention to make in the trial of a lawsuit that she does not remember what happened, and that she was insane at the time.

Now, I want to call to your minds, gentlemen of the jury, the fact that she acted with reason all the way through her unwholesome course. First, she wanted Dr. Roberts. Now, people might differ as to whether she ought to want him; but she did want him, and she is not the first sane woman in the world who wanted some other woman's man, and many of them have succeeded. Her acts were prompted by reason here. She submitted to his kisses, according to her own frank statement, at the very first, with the silly protest that he was married and ought not to do it, and then proceeded to embrace and kiss him. She evidently thought delay was dangerous. Thereafter she desired to get Mrs. Roberts' home for herself, and she acted with reason to accomplish that purpose. She decided, with reason, to plan this County Line meeting to that end. She did not have any trance at the County Line. She remembers everything that happened there. She tried out her scheme to have Dr. Roberts promise to tell his wife everything. She was angry when he refused. Counsel says that was an attack of insanity. Well, if it was an attack of insanity, why didn't it act just the way they claim it did when she killed Mrs. Roberts? Why should these attacks be different one time than another? Why should she remember all that happened on one occasion, and forget almost everything that happened on the other? The same is true of the Wisconsin Hotel meeting. She remembers all of that. And she says here on the witness stand that all she intended to do was to bluff Dr. Roberts; that she knew, when she pointed the gun at him, that he would make the promise; and she said she would not have shot him if he had not done so. Reason? Was she not acting with reason? True, it was a foolish thing to do, but she

was desperate about it, and she used desperate means to accomplish her end.

Then, gentlemen of the jury, take the night of June 20th. She still desired to enforce that promise, and her plans to that end were carefully and skilfully laid. On June 21st she wrote that letter to her friend, Miss Wymans. Now, I am not going to bother you, or take your time to read that, because you have heard it once. If there is any question about it, you can read it in your jury room. But I want to ask you, gentlemen of the jury, candidly, you who are sworn here to do your duty just as I am sworn to do my duty, if that letter is the product of an insane mind? Not much! And that was written at 11:30 o'clock in the forenoon of the day of the tragedy. Then she had dinner and then went to visit two different dressmaking establishments. She remembers all about these things. True, she seemed preoccupied. Well, no wonder! If she was contemplating the meeting with Mrs. Roberts at which she intended to disclose the facts set forth in that letter that she wrote on the typewriter, she would feel *a little bit preoccupied,* and it would be an evidence of something being the matter with her mind if she did not feel preoccupied. She knew that she was going to meet the woman whose throne she intended to take, whose crown she intended to assume for herself, and she was preoccupied, because her mind was tracking perfectly. She was thinking about the meeting which she was going to have with Mrs. Roberts, and wondering what the consequences were going to be, how it was going to come out, whether Mrs. Roberts was going to surrender her throne in a meek and mild manner, or whether she was going to make some contest on the question as to whether she was entitled to continue to live in the home she had lived in for thirty years.

Now, she talked about her western vacation trip and about insuring her baggage that day. That was reasonable. She ate dinner that day—perhaps not as much as

usual. Her mind was preoccupied. She went to post the letters. She remembers the reason why she did not post them. She wanted to be sure Mrs. Roberts would get that letter that day, and so she did not want to post it where it would not be picked up until 4:30 o'clock. She read that fact on the mail box and governed herself accordingly.

Then she met Mrs. Roberts. Mrs. Roberts scored her. She went upstairs. She got the gun. She remembers all that. She shot the last shot at the most vital part of the human body, which shows that she acted with reason. When she shot herself the first time she pointed the gun where she had supposed the apex of her heart was. The only reason she didn't pierce the heart was because her supposition was wrong as to where the heart was, but she shot at the very place that she had believed all her life her heart was located.

Was that the act of an insane person? She acted with reason, didn't she? She was counseled by reason.

She shot the second shot at Mrs. Roberts, because she did not get her with the first one; and she quit shooting after she had shot her the second time, because she saw she had killed her. Is not that the act of a reasoning mind?

Why, Mr. Clancy, in his earnest, brilliant argument, declared and admitted unwittingly, perhaps, that the defendant is "large mentally." How truthful! How that does accord with the fact. Where, gentlemen of the jury, has anyone of you ever come in contact with a woman who showed the mental ability, the education, the training, or who has the command of English that she has? A woman recognized wherever she is known for her ability mentally. Why should not her counsel say that she is "large mentally"?

Can you conceive that a person who is not large mentally could go through this ordeal the way she has, not even exhibiting impatience or anger? You might expect in the light of the evidence that this woman might show some impatience or anger, but she went through this long ex-

amination by her counsel and a fairly thorough cross-examination by me; and yet she was and is patient to the last degree, cautious to the utmost all the way, evading where there is danger, forgetting where it is helpful to her case, remembering things with accuracy when they serve the purpose of her defense, exhibiting no explosion of temper, all the way through perfectly courteous—more than my equal, I confess. Why talk about a person like that being insane? Why, a verdict of insanity in this case might just as well sweep all of us in. She is as sane as any of us!

Now, in paranoia, there are delusions of persecution, and the supposed persecutor is often a victim of homicidal inclinations of the paranoiac. But this woman whom they say has paranoia does not seem to have had any delusions of persecution by Mrs. Roberts. She had no delusions whatever. She never had even a thought that Mrs. Roberts was persecuting her. She even addressed Mrs. Roberts in these three letters here, "My dear Mrs. Roberts." Do you think that if she had been a paranoiac and therefore had delusions of persecution, by Mrs. Roberts, that she would have addressed her over and over again, "My dear Mrs. Roberts?" Nowhere in the correspondence can you find that the defendant expressed the thought that Mrs. Roberts was persecuting her. The ideas that she expressed do not contain a thought of persecution. On the other hand, she wanted the place that Mrs. Roberts had, and she followed reasoning and designing ways to get it. Whether it was the wisest way to play her game might be a question, but it was a hard game. All of us make mistakes in judgment, especially when in difficult situations. Sometimes you gentlemen, who are farmers, cut your hay on the wrong day, and the rain comes down on it before it cures and you can get it in. You have made a mistake; you have not watched the weather signs. You have not heeded the signs which controlled your fathers. But it does not follow that you are insane.

A paranoiac also has delusions of grandeur. He thinks he is the President of the United States, or that he is a

wonderful healer who has been ordained by the Good Lord to cure all the ills of the human race. Sometimes he thinks he is a King. Another is commissioned to change the whole order of things in the world, and to make the world over into heaven. Those are ideas of grandeur; they all have them in some form. Where has defendant shown any delusions of grandeur? Answer me! You may say—"She thinks she is a smart woman." Well, she is. That is not a delusion. She knows she is, and she is right about it. She has patiently gone through the years getting an education, and I give her all due credit for that. She was inspired by proper ambitions, at least in that direction, and she is entitled to credit for that. She is a smart woman. There is no delusion about that. Counsel infers she has a right to think so. I do not even think she unduly parades it. Not at all. But if she did unduly parade it, she would have plenty of company, for there are not a few who are proud of themselves, and see to it that every one knows it. There are a great many perfectly sane people who are foolish enough to keep all they know on dress parade, and sometimes things they do not know.

Furthermore, in this disease of paranoia, the evidence is undisputed that there is no trance-like state such as she claims she had. Trance-like states develop from epilepsy or epileptic equivalents. But they do not claim she has epilepsy, and they do not claim that she had an epileptic equivalent. They claim she has paranoia, which is a progressing, continuing and incurable malady. We all know she has no paranoia, because there is nothing at all the matter with her.

Dr. Davies was right there, and if there is any man in this world that knows whether or not she was insane at that time, he is that man. He talked with her for an hour. He said she was hysterical. Well, there are many women who are hysterical, who are not insane. She talked along with him rationally. He says there was no insanity of any kind—that she was cool, though she was hysterical; that she was rational; that no trance-like state existed.

The defendant's counsel has argued that she was insane when she wrote the bad letters to Dr. Roberts and Mrs. Roberts, and sound of mind when she wrote good letters to her old friends.

Well, now, if we were to follow that argument, we would find that all people who have a bad streak are insane, at least a part of the time, but when they are parading among good people and doing good things, they are sane. That is equivalent to saying that bad folks are insane whenever they do wrong. We know better.

Now, to refer to the hypothetical question used by the defense. They assume in their hypothetical question this: "This is the last Miss Lusk remembers, her memory being a blank until after she had fired one shot through her body." Well, you put that into the question and assume that to be the fact, and the answer does not amount to much because it assumes a fact that is not established by the evidence in this case, but that in fact is overwhelmed by the evidence. So this case resolves itself into this question "Was the defendant conscious at the time she committed this awful act?" If she was conscious of what she was doing, if there was no trance-like state such as exists in epilepsy, or in an epileptic equivalent, then she was and is responsible for her act. So, in the light of all this expert evidence, the real question for you to decide is simply whether she was conscious at the time, and whether or not she is not just purposely forgetting so that she won't have to tell you the horrible details directly connected with that murder.

Now, I want to go over the events close to the murder to test her story in the light of the other evidence. Bear in mind, gentlemen of the jury, that the undisputed evidence in this case fixes it as a fact, that there were two shots from upstairs that were heard within a second to three seconds of each other, and five or six minutes after Mrs. Roberts was shot. Those two shots were the two that Grace Lusk fired upstairs an hour or more prior to the time that she shot the second shot through her body. One of those shots

was a shot out of the window to test the revolver, and the other shot was the first one she put through her own body. They were within three seconds of each other, because a man walked only fifteen or twenty feet between these shots. Now, bearing that in mind, remember this: Defendant says Mrs. Roberts called her names. She remembers that. She then went upstairs. She remembers that. There was no trance then. She got the gun out of the box, put it into her handbag, thought of the fact that she had on a dress for the first time that season that had a pocket in it, and then she took it out of the bag and put the gun into her pocket. She remembers the whole of that. Was she sane then? Was there any trance? Of course there was none. Then she went downstairs, and according to her claim, Mrs. Roberts called her more names; but you are not bound by this story, for she has not told you the whole that happened there. There are facts which you had a right to know from her, because she was the only one who could tell them. Then comes the first shot at Mrs. Roberts. That, she very conveniently says, she does not remember. She is hiding behind the time-worn phrase, "I don't remember," upon which no witness was ever cornered, because you cannot look into the secrets of the soul or the mind to find out whether one remembers or not. When a witness says, "I don't remember," you have to decide from the other facts whether that is not just a hide-and-seek proposition, and whether it is true, or not. Then follows the second shot, which comes after the deliberation that gives the woman a chance to retreat twenty-four feet. This shot is pumped into a vital part of the body, and the woman falls in her tracks. Defendant says she does not remember that. But she does remember re-loading the gun upstairs. A strange thing, isn't it? And she remembers she shot out of the window, and she remembers why she so shot; it was in accordance with a custom of hers, upon re-loading the pistol, to shoot one shot first to find out whether the cartridges were clogging. She wanted to be sure that the gun would

not clog when she fired to remove herself from the world and away from the ordeal of a trial.

So, as to the physical facts, she remembers the reloading of the gun, and the shot out of the window, both of which occurred before she shot herself, because that was why she was reloading, and that was why she shot out of the window. And then, conveniently, she forgets the next fact. She forgets that she shot herself where she had always supposed her heart was. But that fact shows that she was reasoning. She shot the finger that time, for before the second shot we find the hand bleeding. That means that she was reasoning to the extent that she put her left hand on her breast at the place she supposed her heart was and shot the finger off with the first shot at herself. Reasoning? How can you get away from it? Then she writes this blood-stained note that I have already read. She remembers that. She remembers the blood in the room. And then she has the conversations at the head of the stairs, which she admits she remembers. She swore here that she remembers the whole business from first to last with these convenient exceptions. She admitted to several that she shot Mrs. Roberts because Mrs. Roberts called her names. These were the admissions to Davies, McKay, the sheriff, Mr. Redford, the hospital nurse, Steiner, Tullar and the sheriff, all evidencing the fact that she remembered all and everything. Gentlemen, she could have told this story to you on this witness stand the way she told it to the representative of the United States and the district attorney of this county at the hospital, if she would.

Now, gentlemen of the jury, I believe in truth. I hope I do as much as any man on earth. I do not know whether I do or not, but I think I do. I am going to frankly confess that I do not blame this poor woman for saying that she does not remember. The facts are that she does remember, but I do not blame her for saying otherwise. She knows she has committed a heinous crime. I do not know how she will be judged when she has to face her Maker; I

do not know how much the grace that God gave her may excuse her on the Judgment Day, but in the eyes of our law, she has taken that which God gave to the world; she has killed a human being, and that has made another premature mound out here in the cemetery of this beautiful city. She did that act with intent, and she knows it, but I do not blame her for saying she does not remember. For her sake, I hope she can some day so live as to forget, and that her crime can be forgiven by Him who is so kind in judgment.

Now, Senator Lockney saw the danger of this situation, keen-minded man and good lawyer of broad training that he is. He saw that this forgetfulness looked pretty shaky. So he said she no doubt had a suspicion as to what had happened down there. Yes, I think she did have a suspicion, but she cannot hide behind a mere suspicion when the facts show that she knows.

The subject of memory is a very interesting subject in the law. Spencer says: "It is impossible, while staring at the sun to think of green." I suppose that would be true even of those of us who take kindly to green. Just as we cannot look at the sun and see green, so an interested person cannot look at a situation and permit his mind to unfold anything that is profoundly against his or her own interests.

This convenient forgetfulness that we find in all biased witnesses, is proverbial. It has been known ever since the trial of lawsuits commenced. We were, however, entitled to have the whole truth here. I could be a better judge of this situation if I had it, and you could be better judges if you had it. If the events that happened there justify manslaughter in the third degree, the defendant should have told those facts, and should not have hidden behind forgetfulness—forgetfulness that does not exist, and never did exist, and which we know on the physical facts, and in the light of the whole truth, did not exist.

Counsel has talked to you about reasonable doubt. Just a word on that, though you will get it all from the Court.

First, on this proposition of murder in the first degree;

we know the intent existed, even though it may have been a sudden intent. I therefore inquire:

First—Have you any doubt about it?

Second—If any one of you has any doubt, is that doubt founded on reason? Is it a doubt that would cause you to pause and hesitate in the important affairs of your own life? I say no. The defendant has not met that situation. We have shown from the physical facts that the intent was formed, that she followed twenty-four feet to deliver the second shot, killed her victim by shooting her in a vital part of the body; that she went upstairs to get the gun to do it with, either of which facts establishes murder in the first degree. Have you any doubt, founded upon reason, any of you, but that she wanted Mrs. Roberts' home? Have you any doubt about her getting the gun for this purpose? Can you see anything in the "fishy" contention that she went upstairs to get Dr. Roberts' letters? Why, the letters were found up there afterwards, and apparently had never been touched. Are you going to take that kind of silly contention to inject a reasonable doubt in this case, on the question of intent? Have you any doubt upon the proposition, that these letters were never taken by her from that desk drawer? If she did not get those letters from that drawer, then she went up to get the gun with which to do this job, and the intent is there. Have you any doubt about the fact that Mrs. Roberts was shot twice? Have you any doubt of the fact that her death was at the hand of the defendant; that her charming little gun, with its message of death, shot out twice in the room where these women were, and removed one character in the "eternal triangle?" Have you any doubt that she was conscious at the time? Have you any doubt upon the proposition that she could distinguish between right and wrong at the time? Have you any doubt that she is sane now? If she is sane now, she was sane then. That is what her own doctors testified to in substance and effect.

If you have a reasonable doubt as to the existence of the intent, have you any reasonable doubt that the crime was perpetrated by an act imminently dangerous, and that the

said act evinced a depraved mind regardless of human life so as to constitute the crime of murder in the second degree?

I have wanted to feel, gentlemen of the jury, that my duty is the same as yours, though the things I have had to do in the trial of this lawsuit are different than yours. I have wanted to be in the same impartiality of mind that the attorneys on both sides asked you to be in when you entered upon this trial. I want to be of the same degree of sympathy that you are for this woman; I do not blame men for having sympathy for women defendants. But we cannot decide cases of this kind on sympathy. If these cases were to be decided on sympathy, every man or woman guilty of the most heinous crime would be acquitted, because, gentlemen of the jury, there is seldom a criminal case where there is not some dear old father or mother who loves the unfortunate boy or girl on trial. There was never a case when attorneys could not find reasons for, and response to, appeals to the hearts of men; but, gentlemen, our duty is clear. Our mission under our sworn oaths—and I count myself as the thirteenth member of the jury when I say that—is to just step right out as courageously as these boys are marching in this great Christian Crusade that our nation is now engaged in, to redeem the world from autocracy—you step right forth with the courage and the honor and the bravery required to do the thing which real justice demands; which the enforcement of the law demands, and which the protection of society demands.

The state of Wisconsin, in all its dignity, fair to all its citizenship, which gives equal rights to all and special privileges to none, and represents the highest principles of democratic government, asks at your hands, because it is right and because it is just, and because it is in accordance with the facts in this case, that you, gentlemen of the jury, who are constituent parts of its governmental machinery, go out in this case and do your plain duty. In accordance with my duty as the representative of the State, I can ask nothing less and be honest, though I have profound pity for this woman and her poor old father, even to the point of regretting that

it became my humble duty to act as counsel in her prosecution. The case is with you, gentlemen of the jury, and may God give you the grace and the strength to perform your sad but plain duty.

THE JUDGE'S CHARGE.

JUDGE LUECK. Gentlemen of the Jury: In the regular and usual progress of a jury trial it is the duty of the presiding judge, after the arguments of counsel are concluded, to give, in a charge, the law by which the jury are to be guided in their deliberations and in view of which they are to find their verdict; and it is now my duty to instruct you as to the law applicable to this case. With the decision of the facts I have nothing to do; and you are not to infer from any ruling or statement made by me during the progress of the trial that I have any opinion as to the guilt or innocence of the accused or as to any issue of fact in this case. All rulings were made with the one purpose in view, namely, of presenting this case to you, who are the sole judges of the facts, for a determination of the facts on only such evidence as the law recognizes to be proper. However, it is for the court alone to pass upon the questions of law involved and it is your duty to receive, accept and be guided by the law as given you in these instructions. Personal views and opinions of counsel on either side, if any were expressed, must have no place in your deliberations. Counsel have no right to offer them to you and you must not be guided or swayed in any way by such statements. While you are to consider the arguments of counsel in so far as they will assist you in arriving at a just verdict upon the evidence produced in court, you should not in considering the case adopt as your own the conclusions of counsel on either side. You are to draw your own conclusions from the evidence in the case. As the sole judges of the facts in the case you are to determine your verdict from the evidence produced upon the trial under the law as given to you by the court.

The defense of insanity is one recognized in the law; and if insanity is found in truth to exist it is a perfect defense to an information for murder. You should give to it the same careful consideration that any other defense to a criminal accusation of this kind would be entitled to receive, yielding to the defendant the benefit of every reasonable doubt on the issue if any such arises from a consideration of the whole case. But if after a careful consideration of all the evidence in the case, you have no reasonable doubt as to the sanity of the defendant at the time of the commission of the alleged offense, you should not make use of this defense merely as an excuse for the acquittal of the defendant.

The word "insane" means such abnormal mental condition, from any cause, as to render the accused at the time of committing the

alleged criminal act, incapable of distinguishing between right and wrong and so unconscious at the time of the nature of the act which she is committing, and that commission of it will subject her to punishment.

Keep in mind that the condition which gives immunity from punishment is a mental, not a moral, condition. Perverted affections, moral feelings or sentiments, unaccompanied by mental disturbance, furnish no excuse for a criminal act. Even if you should find that Dr. Roberts is more to be blamed than the accused for the relations that grew up and existed between them, it would furnish no excuse or justification for the taking of the life of Mrs. Roberts. The evidence as to those relations is to be considered by you in determining the mental state of the defendant at the time when Mrs. Roberts came to her death. Irresistible impulse, that is, passionate propensity, no matter how strong in persons not insane, is not recognized in the law as an excuse for a criminal act. One cannot claim immunity from punishment for a wrongful act, consciously committed with consciousness of its wrongful character, upon the ground that through an abnormal mental condition he did the act under an uncontrollable impulse. One, at his peril of punishment, commits an act while capable of distinguishing between right and wrong and conscious of the nature of the act, though his condition may effect the grade of the offense.

In order to be responsible, he must have sufficient power of memory to recollect the relation in which he stands to others and in which others stand to him; that the act he is doing is contrary to the plain dictates of justice and right, injurious to others and a violation of the dictates of duty. Although he may be laboring under partial insanity, if he still understands the nature and character of his acts and its consequences; if he has a knowledge that it is wrong and criminal and a mental power sufficient to apply that knowledge to his own case and to know that if he does the act he will do wrong and receive punishment,—such partial insanity is not enough to exempt him from responsibility for criminal acts.

But it must be kept in mind that the question of insanity as a defense to crime relates to the moment of the offense. However sane one may have been at all other times, if actually insane within the legal definition as given you—if mental disease exists which destroys his capacity to rationally apprehend the significance of his acts or his responsibility therefore, he is exempt from criminal responsibility and it is immaterial how that condition came about. whether by his own voluntary act or otherwise.

Medical men have been called as experts by both the state and the defendant to give opinions as to the mental condition of the defendant. Such opinions, whether based upon personal observation of the defendant or upon hypothetical questions embodying facts claimed to have been testified by other witnesses, are to be considered by you in connection with the other evidence in the case. But you are not to act upon this expert testimony to the

entire exclusion of other testimony, and it ought not be allowed to overcome facts that may be established beyond a reasonable doubt. You are not to take for granted that the statements contained in the hypothetical question are true. On the contrary you are to carefully scrutinize the evidence and from that determine what, if any, of the statements in the questions are true and what, if any, are not true. Even where medical witnesses have attended the whole trial and heard the testimony of the other witnesses as to the circumstances of the case, they are not to judge of the credit of the witnesses or of the facts testified to by others. This is your exclusive province because it is for you to decide what facts have and what have not been proven on the trial. Should you find from the evidence that some of the material statements contained in a hypothetical question are not in accordance with the facts, or that material facts established beyond a reasonable doubt have been omitted, and that they are of such a character as to entirely or partially impair the value of the opinion you will attach only such weight, if any, to the opinion as may be warranted by the facts as found by you. These expert witnesses are not to determine the sanity or insanity of the defendant; that is for you and you alone to decide from all the evidence in the case.

In determining the mental condition of the defendant at the time the offense was committed, you should take into consideration the opinions of the medical experts and testimony, of the statements, acts and conduct of the defendant at and about the time when Mrs. Roberts was killed and before and after that time, the probability or improbability that a person of defendant's character and habits would if sane commit an act like the one with which the defendant stands charged; also all of the testimony bearing upon her past history as tending to show her habits, customs, manners and nature together with the afflictions, if any, from which she suffered and which the evidence shows had a bearing on her mental condition as well as the mental afflictions, if any, of her immediate and remote ancestors and relations by consanguinity or blood relation and which the evidence shows there is a probability that defendant inherited, and all the facts and circumstances which shed any light upon that question.

Every person is presumed to be sane. But that is a mere presumption of fact and may be rebutted by the evidence. And if taking all the evidence together you have a reasonable doubt as to the sanity of the defendant at the time of the commission of the alleged offense you should find her insane.

If after a careful consideration of all the evidence in the case you find that any mental aberrations or sickness of mind, produced by any cause, perverted defendant's judgment, memory and reason so that she was thereby rendered incapable of realizing the nature and quality of the act she was doing, or that it was wrong, or if you have a reasonable doubt as to whether she was sane within the meaning of the term as defined by me, then it is your duty to find her insane.

The general plea of not guilty presents two propositions; first, whether the defendant shot and killed Mrs. Roberts; and second, if you find that the accused fired the fatal shot you will determine the grade or degree of crime committed by her. If you have a reasonable doubt about whether the defendant killed Mrs. Roberts a verdict of acquittal must be returned. If you are satisfied beyond a reasonable doubt that Grace Lusk shot and killed Mrs. Roberts and that she was sane at the time, you will find her guilty of that one of the three grades of criminal homicide which the evidence satisfies you beyond a reasonable doubt was committed by her, namely, either murder in the first degree, murder in the second degree or manslaughter in the third degree. These three degrees of criminal homicide are graded by the laws of Wisconsin as to severity of punishment in the order in which I have just stated them. If you have a reasonable doubt as to which offense was committed by her, you will give the defendant the benefit of such reasonable doubt by finding her guilty of the lesser offense, provided the evidence convinces you beyond a reasonable doubt that she is guilty of such lesser offense.

By the statutes of this state murder in the first degree is defined to be "the killing of a human being wilfully and from premeditated design to effect the death of the person killed." The term "wilfully" means intentional, as distinguished from accidental. "Premeditated design" means the mental purpose, the formed intent to take human life.

It is not necessary that the formed intent or mental purpose shall have existed for any particular length of time before the crime was committed. It is sufficient if there was a design and a determination to kill distinctly formed in the slayer's mind at any moment before, or at the time that the fatal wound was inflicted. There need be no appreciable space of time between the intent to kill and the act which caused death.

The jury must be satisfied, beyond a reasonable doubt, that the act of the accused not only resulted in the death of Mrs. Roberts, but they must be further satisfied beyond a reasonable doubt that the accused entertained the essential felonious intent, that is, a premeditated design to kill before a conviction can result. But if a person inflicts a fatal wound upon another by an act naturally and probably calculated to produce death, the law presumes that such person, when the act is perpetrated, foresaw and intended the result which followed, and hence is guilty of murder in the first degree unless the evidence raises a reasonable doubt as to the premeditated design to take human life.

The essential elements of murder in the second degree of homicide are: first, an act imminently dangerous to others; second, an act of such a character as to evince a depraved mind regardless of human life; third, absence of any premeditated design to effect the death of the person killed, or of any human being; fourth, absence of heat of passion; fifth, that the act must be a voluntary act as distinguished from an accidental or inadvertent act.

The chief difference between the two degrees of murder consists in this: in murder in the first degree premeditated design to effect the death of the person killed must be present, while in murder in the second degree the felonious intent is inferred or implied as a matter of law from the slayer's act.

"Imminently dangerous to others," means that the act must be inherently and consciously dangerous to life and not such as produces death by misadventure. It must be dangerous in and of itself when committed.

The essential elements of manslaughter in the third degree of crime are: first, death caused by a dangerous weapon; second, the infliction of the fatal act while the slayer is in the heat of passion; and third, absence in the slayer's mind of the design to effect death.

The term "design to effect death" means formed intent to kill; and the term "heat of passion" means such mental disturbance caused by a reasonable, adequate provocation as would ordinarily so overcome and dominate or suspend the exercise of the judgment of an ordinary person as to render his mind for the time being deaf to the voice of reason; make him incapable of forming and executing that distinct intent to take human life essential to murder in the first degree and to cause him, uncontrollably, to act from the impelling force of the disturbing cause, rather than from any real wickedness of heart, or cruelty, or recklessness of disposition. And this "heat of passion" is the feature that reduces the killing of a human being from murder in either of the degrees mentioned to manslaughter.

A condition, no matter how caused, that does not amount to legal insanity but which overpowers and controls reason, reduces the offense from murder in the first degree to one of the lesser degrees of criminal homicide referred to. But if reason was not so completely dethroned but that the defendant, at the moment of the shooting, was able to exercise her judgment, then mere words spoken by the deceased, however approbious, obscene, abusive or insulting they may have been, cannot justify the shooting nor reduce in grade or degree the criminal character of the act.

It is proper for the jury in arriving at their verdict to consider whether there was or was not a motive for the commission of the alleged crime by the accused. Proof of motive to commit the crime alleged in the information is not, however, indispensible or essential to a conviction; and the state is not obliged to prove a motive on the part of the defendant. But testimony as to motive or absense of motive is to be considered by you in connection with the other evidence in deciding the issue in this case. Intent and motive are not identical in meaning. There is a clear distinction between these two terms. "Motive" is the moving power which impels a person to do a specific act. The word "intent" is equivalent to the word "purpose" and denotes a design to accomplish a definite result. Where a specific intent is an essential element of a

particular crime, such intent must be found to exist beyond a reasonable doubt before a verdict of guilty can result. Motive is never an essential element of a criminal offense.

The information filed by the district attorney is of itself no evidence whatever of the guilt of the accused. It is merely a formal charge made for the purpose of putting the defendant on trial, and no inference is to be made against her from the fact that she is on trial. She is not obliged to prove herself innocent; her plea of not guilty puts upon the state the burden of proving her guilt beyond a reasonable doubt.

The defendant comes into court and enters upon this trial with the presumption of innocence in her favor, and this presumption of innocence attends the defendant from the beginning of the trial to the end thereof and prevails and must prevail unless overcome by evidence sufficiently strong and convincing to satisfy you of her guilt beyond a reasonable doubt. And each and every element of the offense must be established beyond a reasonable doubt; and if the testimony in the case leaves your minds in reasonable doubt as to whether any essential element of the offense is lacking, then you should acquit the defendant of such offense.

Each juror should be satisfied of the guilt of the defendant before a verdict of guilty can result. If any one juror has a reasonable doubt of the guilt of the defendant she is entitled to the benefit thereof and it is not the duty of such juror, while having such a reasonable doubt to surrender his convictions even if a majority or all the other jurymen are against him. It is, however, the duty of each juror, while the jury are deliberating upon their verdict to give careful consideration and attention to the views his fellow jurymen may present upon the evidence in the case. A juror should not close his ears and stubbornly stand upon the position he first takes regardless of what may be said by the other jurors upon the testimony, facts and circumstances proved in the case.

The "reasonable doubt" mentioned, means a doubt resting in reason and founded on or arising out of, or for want of, evidence produced in court, and such a doubt as would cause an ordinarily prudent man to pause and hesitate to act in the most important affairs of life. Stated in other words a reasonable doubt is that state of the case, which after the entire comparison and consideration of all the evidence leaves the mind of the jurors in that condition that they can not say they feel an abiding conviction to a moral certainty of the truth of the charge. Doubts that do not arise from the evidence, or want of evidence, or are purely imaginary, fanciful or speculative, should not influence your verdict. It is not necessary that you should be satisfied beyond all possibility or suspicion of doubt. You are not to search for doubt, but you are to search for truth.

You are the sole judges of the credibility of the witnesses and of the weight to be given to the testimony of each. In considering this you should take into consideration the opportunity the several

witnesses have had of seeing and knowing the matters and things about which they have testified, their conduct and demeanor while testifying, their interest or lack of interest, if any, in the result of the trial, the probability or improbability of the truth of their several statements in view of and after considering all the testimony, facts and circumstances proved in the case.

Certain testimony has been admitted of alleged statements claimed to have been made by the defendant a few days after June 21, 1917, while she was at the hospital. In weighing and considering testimony, statements of the accused, if they tend to prove guilt, may be considered by the jury, if such statements are clearly and satisfactorily shown to have been made. But testimony as to alleged statements should be scrutinized with extreme care and caution. And in determining the weight that you will give to the testimony of statements claimed to have been made by the accused, you will take into consideration the conditions under which they were made and the influence of her surroundings upon her mind; that witnesses in testifying to conversations, in which statements are alleged to have been made, may, by inadvertently or purposely substituting their own language for that of the accused convey a meaning different from that intended by her; also the weakness of human memory and the danger of mistake through the misapprehension of witnesses or in the misuse of words; and all the facts and circumstances which shed any light upon the value of such testimony.

Testimony has been received in this case of the good reputation of the defendant as to being a law abiding and peaceful citizen previous to the time it is alleged that she committed the offense charged in the information. Such testimony should be considered by you in connection with all the other evidence in the case, and if after such consideration you entertain any reasonable doubt as to the guilt of the defendant you should acquit her; but if from all the evidence in the case, including the testimony as to the good reputation of the defendant, you are satisfied of her guilt beyond a reasonable doubt then it is immaterial what her reputation has heretofore been as to being a peaceful and law abiding citizen.

The case is now with you, gentlemen of the jury. Carefully weigh and consider all the testimony, facts and circumstances proved in the case; and without bias, passion or prejudice, fear or favor, arrive at your verdict and fearlessly pronounce whatever conclusion the facts and circumstances of the case may force upon your minds.

THE VERDICT AND SENTENCE.

May 29.

At 5:30 the *Jury* retired and at 9:30 came into Court and handed the following paper to the Clerk which he read:

"We, the jury, find the defendant, Grace Lusk, guilty of murder in the second degree.

W. H. MEADOWS,
Foreman."

Immediately the Prisoner attacked the Circuit Attorney, grabbed him around the neck with her hands, scratched his face and threw him to the floor. She had to be forcibly taken from the court-room to the jail where she continued to be violent of speech and action. Because of her conduct JUDGE LUECK appointed a special commission of insanity experts to make a special inquisition on the question of her sanity after the verdict. This special commission continued observations of her until *June 18th.*

The members were called as witnesses and examined by the COURT. They unanimously agreed and testified that she was sane. A motion for a new trial came up at the same time. The JUDGE thereupon found that she was sane and denied the motion for a new trial and she was thereupon sentenced to a term of nineteen years in the Wisconsin State Penitentiary at Waupun, Wis. When the JUDGE reached that part of the sentence, "nineteen years," the prisoner fainted or pretended to faint and would have fallen to the floor had she not been caught in the arms of her counsel. She was taken back to the jail and the following day taken to Waupun to commence her sentence. No appeal was taken to a higher court.

THE TRIAL OF JAMES DALTON FOR FALSE PRETENSES, NEW YORK CITY, 1823.

THE NARRATIVE.

A cargo of butter was on sale at a wharf in New York City and James Dalton bought a tub of it from the owner, telling him that he was a grocer at No. 77 Chatham street and that he would pay for it when he returned the tub. In a day or two he came back with the tub, paid for the butter and said that as it was good he would take three tubs more which the owner let him have. But he never came back again to pay for the three tubs and when it was discovered that no such person carried on business at 77 Chatham street, he was arrested and indicted for obtaining the three tubs by false pretenses.

On the trial, the owner testified that he would not have let the prisoner have the three tubs of butter had he not said he was a grocer at 77 Chatham street and had he not paid for the first tub he purchased. Dalton's lawyers set up three defenses which were all law points: 1st, that the statement as to his business and residence was not a false pretense within the statute; 2nd, that as the owner relied on his having paid for the first tub as well as on the false statement there was no crime; 3rd, that the owner was guilty of negligence, as he could easily have verified his statement before he parted with his property.

The court ruled against Dalton's lawyers on the first and third points but in his favor on the second, holding that a false statement in order to be punishable must be the sole inducement for parting with the property.

THE TRIAL.[1]

In the Court of General Sessions, New York City, December, 1823.

HON. RICHARD RIKER,[2] *Recorder.*

December 6.

James Dalton was charged with obtaining three tubs of butter from William Hammelin by a fraudulent pretense. The indictment set out that he had represented "that he was a grocer at No. 77 Chatham street when he, the said James Dalton, was not at the time mentioned, a grocer residing at No. 77 Chatham street nor at any other place in the City of New York."

The prisoner pleaded not guilty.

Hugh Maxwell,[3] for the People.

Francis A. Blake,[4] for the Prisoner.

THE EVIDENCE.

William Hammelin. My ship was lying at a wharf here last 29th of October when Dalton whom I had not seen before, came on board and bought a tub of butter, stating that he was a grocer residing or doing business at No. 77 Chatham street in this city. He did not pay for it; he said he would do so when he returned the tub. It was customary amongst masters of vessels to trust grocers residing in the city. I accordingly, without hesitation, permitted Dalton to take away the butter, relying on his promise for payment. Dalton returned the tub, paid for the butter and stated that as it was good he would take three tubs more. I assented to this, but the prisoner did not again make his appearance. A few days afterwards I discovered that his whole story was false and that no such person resided at 77 Chatham street. I certainly should not have trusted Dalton had it not been for his repre-

[1] Wheeler's Criminal Cases. See 1 Am. St. Tr. 108.

[2] See 1 Am. St. Tr. 361.

[3] See 1 Am. St. Tr. 62.

[4] FRANCIS ARTHUR BLAKE (1796-1824). Born Boston, Mass. (son of Francis Blake of Worcester), married Elizabeth, daughter of Judge Thomas Dawes, of Boston, (born 1795) but left no issue. His widow afterwards married Joseph Cowden, by whom she had issue. He graduated Harvard 1814 and died at New York. See "A Record of the Blakes of Somersetshire" . . . from the Notes of the late Horatio G. Somerby, Boston, 1881.

sentation as to his place of residence and his occupation.

Mr. Blake. Were you prepossessed in favor of the prisoner by this apparent honesty in fulfilling the promise he had made on his first purchase? Yes, I should not have parted with the butter last purchased had not Dalton bought and paid for the former quantity. This I regarded as a cunning device.

Mr. Blake. There can be no dispute with regard to the facts in this case. I have not the slightest disposition to vindicate the moral honesty of the prisoner but I do believe he is in point of law entitled to an acquittal. The questions we shall raise however will be addressed entirely to the consideration of the court.

THE RECORDER. The court at present entertains an impression that the prisoner, on the whole case, should be convicted, but as some confusion exists amongst the authorities, it would perhaps be advisable in order to settle the law, to suffer a verdict to pass by consent against the prisoner, reserving the case for the opinion of the court.

Mr. Blake. I shall not object to the course proposed provided it is fairly understood that the prisoner's counsel should not, owing to consent, be confined after verdict to a mere motion in arrest of judgment founded on the record; but that the whole law arising on the evidence should be open for discussion on the argument of the motion.

Mr. Maxwell consented.

THE RECORDER. Gentlemen: I direct you to return a verdict of guilty. The questions in dispute are all questions of law which will be argued before me later and if it shall appear that the law does not reach the case the prisoner will have another jury.

The *Jury* thereupon rendered a verdict of *guilty.*

Mr. Blake. Your Honor, it will not be contended I presume by the counsel for the people that this case would have afforded good ground for an indictment either at common law or under the statute 33 Hen. VIII. c. 1. Dismissing then at once the numerous cases which were adjudicated prior to the enactment of the stat. 30 Geo. 11. c. 24. let us see how far this prosecution can be sustained under that statute and under our own.

By the 18th sec. of the statute (1 N. R. L. 410) it is enacted that "every person who shall hereafter be convicted of knowingly and designedly, by false pretense, obtaining from any other person any money, goods or chattels or other effects with intent to cheat or defraud any person etc. shall be punished by fine and imprisonment or either" etc.

I contend that the indictment in the present instance does not set forth a sufficient false pretense within the statute, on two grounds: first, the charge against Dalton consists in the uttering of a mere naked falsehood whereby he obtained the goods from Hammelin on the faith of *his own assertion only,* and *his own personal responsibility,* without borrowing credit by using the name of *any*

other person whatever; in which case, I say, no indictment will lie. Again; I shall insist, that the pretense set forth in the indictment is such an one as might have been guarded against by the exercise of ordinary prudence on the part of the seller; that, by failing to exercise such prudence, he has been guilty of a culpable neglect—of such laches as destroys his right of resorting to this tribunal; and that whether this is apparent on the face of the indictment or not, is a question of *law*, proper for the consideration of the court on a motion in arrest of judgment.

Should the opinion of the court be against the prisoner on these two points, and should it be decided that sufficient appears on the record to authorize a judgment, I shall still contend, that a fact was disclosed in evidence *dehors* the indictment, which rendered it the peremptory duty of the jury to acquit, and that we are therefore entitled to a new trial. It appeared from the testimony of Hammelin, that he parted with his goods, not *solely* on the pretense set forth in the indictment, but owing to that pretense conjoined with the fact of Dalton's having purchased a quantity of butter of him previously, and having paid for it according to his promise, whereby Hammelin had been inspired with confidence in his honesty. I hold it to be true in principle, as well as settled by authority, that the false pretense alleged must be the *sole* inducement to credit; and that whenever another motive appears to have operated on the mind of the seller, the case does not come within the provisions of the statute.

Having briefly stated the grounds on which I shall rely in this defense, I would beg leave, once for all, to express my own views and opinions with regard to the morality of the transaction. I do not mean to offer a single suggestion in favor of the honesty of the prisoner, or to attempt for one moment a vindication of his character. If the principles of criminal jurisprudence could with propriety be extended to the punishment of every dereliction from social duty, I should not at the present time appear before this court in his defense. It is not, perhaps, to be regretted, that he has already suffered an imprisonment of considerable duration, while this prosecution has been pending. While I admit, however, the moral turpitude of his conduct, I would remark, that his offense belongs, in my opinion, to a class of cases which human legislation cannot with safety embrace. Treason, murder, and robbery are well defined public wrongs, and may well be punished by human laws. Falsehood, ingratitude, and numerous instances of the most disgraceful violations of confidence and trust are also *crimes;* but they are crimes for which the perpetrator is, necessarily, amenable only to his conscience and to his God.

These remarks, I conceive, are applicable, in their fullest extent, to the offense with which the prisoner stands charged in the indictment now under consideration. It is impossible to distinguish this from any other case in which a man obtains goods *on his own responsibility*, by means of a mere *untruth*. This has been repeatedly

held insufficient; but, before I proceed to cite or comment on adjudged cases, let us for a moment consider the point as it regards principle, and see what would be the consequence of a recognition of the opposite doctrine.

J. S., in order to obtain a loan of money, represents himself to be perfectly solvent, and that the amount of his estate much exceeds his just debts. His pretense is successful, and he accomplishes his object. It afterwards appears conclusively, that this is an intentional and impudent falsehood. Would an indictment lie against J. S. on the statute in question? I trust it would not.—T. N. obtains goods on credit, by displaying a list of his debtors; amongst whom he enumerates divers persons as indebted to him in a large amount, and states them all to be persons of responsibility and credit. It is proved, that at the time of the representation, not one of those persons was solvent, and that this fact must have been known to T. N. when he made it. Here, too, is a gross falsehood; yet I presume it will not be contended that T. N. is therefore indictable. Nevertheless, each of these false representations "*relates to an existing fact.*"—They are not "representations as to what will or will not happen." If, therefore, no indictment could in either instance be sustained, I would, with much deference to the opinion of the learned judge who presided at the decision of the case of James Conger, (4 C. H. R. 68.) suggest, that the first distinction taken in that case extends the principle farther than expediency, public policy, or authority will warrant.[5]

Innumerable instances daily occur, (and that too amongst men who sustain a high reputation, both in the mercantile world and in society at large,) in which credit is obtained by means altogether inconsistent with honorable principle and strict integrity, and where *falsehood* forms the principal ingredient in the fraud. It is to be regretted that human justice cannot, consistently with sound policy, reach such cases. If this were attempted, however, so numerous would be the accusations presented for the adjudication of courts of criminal jurisdiction—so infinitely various would be the circumstances and complexions of those cases—so uncertain would be the landmarks of the law—that it would become totally impossible to establish any general rules on the subject of frauds.

Aware of this difficulty, courts have been compelled to adopt the following as a general principle: "Where a man makes use of a false token, or any deceit or artifice calculated to gain credit *beyond his own assertion*, or his act predicated on *his own responsibility*, and by such means obtains money or goods, this offense falls within the statute, and the defendant is liable to its penalty." (George

[5] In the case alluded to (4 C. H. R. 68) the Mayor in pronouncing the opinion of the Court says, "A false pretense must relate to an existing fact. Any representation as to what will or will not happen, cannot in our opinion, be considered as a false pretense. This marks the distinction between a false promise or a false representation and a false pretense within the statute."

Lynch's case, 1 C. H. R. 139.) This I conceive to be the true limitation of the rule; and I do not think it necessary to resort to a single argument to show that the pretense laid in the indictment does not come within it.

The same principle decided in Lynch's case is recognized in Cromwell and Field's case, (3 C. H. R. 38.) and in Dinah Perry's case. (1 C. H. R. 164.) In the case last mentioned it appeared, "that the prisoner came to the shop of one George Lee, in Greenwich street, and called for a pair of morocco shoes, stating that she lived with Mrs. Newton, who resided but a short distance from Lee; and that if he would suffer her to take the shoes she would carry them to her mistress, and if they suited, she, the prisoner, would return the money; otherwise the shoes. The prisoner not returning, Lee went in pursuit, and found the prisoner did not live with Mrs. Newton, but had embarked on board a sloop to go up the North River, and he took the shoes from her possession. His honor the mayor charged the jury, that the offense of obtaining goods by false pretenses under the statute, was not supported by the testimony in this case. This was not a false representation against which ordinary prudence could not guard. Had the prisoner made use of any artifice or circumvention whereby she had obtained the goods on the credit of Mrs. Newton, then her offense would have been within the statute; but according to the testimony it appeared, that by a resort to a falsehood merely, the prisoner obtained the property on her own credit." The court concluded by stating to the jury, that a conviction would furnish a dangerous precedent; and an immediate acquittal was the result.

Now, I would beg leave to suggest, that if the decision in the case last cited be law, and if it be true that the defendant by representing that she lived with Mrs. Newton, and was her servant, was not guilty of such a "fraud and circumvention" as would bring her case within the statute, but "of a falsehood merely," then James Dalton, the defendant, does not appear, from the allegations of the indictment, to have committed an offense cognizable in this court.

In Dinah Perry's case, the defendant stated that she lived with Mrs. Newton, and that Mrs. Newton was her mistress. It appears on the face of the indictment under consideration, that Dalton represented himself to reside at No. 77 Chatham street, and that he was a grocer. Here is in each instance *a falsehood as to residence and occupation.* These falsehoods were in each case the means of obtaining credit, and they are, therefore, parallel.

If Dinah Perry had procured the goods under a representation that she had been sent by her mistress for them, the charge against her would have been sustained. So would it have been in the present instance, if James Dalton, the defendant, had represented that he was the agent of a grocer transacting business at No. 77 Chatham street, and that he had sent him for the butter.

In either of the cases supposed, the defendants would have been, respectively, guilty of "*making use of a deceit calculated to gain*

credit beyond their own assertion, or their acts predicated on their own responsibility," which we conceive to be the gist of the offense.

We trust this distinction, which we believe to be a sound one, has been sufficiently enforced, both on principle and by authority. If the *name and credit of any individual, other than the defendant,* was introduced and used, at the time of obtaining the goods, he is guilty. On the other hand, if his relation amount merely to the assertion of *any facts with regard to himself,* or of *his own credit and responsibility,* and if on that relation the seller part with his goods, the defendant is guilty of a dereliction from moral honesty, but not of an indictable crime.

In order to render the distinction for which we contend more clear, we shall refer to some cases, in which the accused has been convicted on the ground that he made use of the credit and name of another individual. (Miller's case, 12 Johns. 292. Joseph Heath's case, 1 C. H. R. 116. Peter Johnson's case, 1 C. H. R. 116. Eli B. Mott's case, 3 C. H. R. 155. Solomon Valentine's case, 4 C. H. R. 36.)

Should the court, notwithstanding the suggestions which have been offered on this subject, be of opinion that the prisoner may be guilty under the statute, even when the pretense with which he stands charged consists in a mere *falsehood,* calculated to obtain property on his own responsibility, I shall insist on his discharge on the following ground: The pretense laid in the indictment is not such an one as Hammelin could repose confidence in, consistently with ordinary prudence and caution.

I deem it unnecessary to dilate on the importance of precluding him from all recourse to this court, unless he has, in his transactions with the prisoner, made use of such diligence and care. Were every individual who thought proper to part with his property, on the idle and groundless representations of a stranger, allowed to resort to the criminal tribunals of his country, the attendant evils and inconveniences would be innumerable. One of the principal of these would be, the diminution of vigilance and caution on the part of the seller. Few would suspect a man of resorting to falsehood and deception for the purpose of obtaining goods to a trifling amount, if a severe and ignominious punishment were, in all cases, the certain consequence of detection. Caution would be destroyed, and the bold and artful depredator would find in the confiding and unsuspicious citizen an easy prey. The number of offenders would accordingly be increased, and the catalogue of crime, instead of being diminished, would be swelled almost beyond conception. It is surely better, then, to refuse to heedlessness a legal sanction, and to adhere to the universal maxim of the law, that courts of justice were instituted for the protection of the vigilant and the watchful, and not of those who slumber.

This principle is clearly stated in the case of Cromwell and Field. (3 C. H. R. 38.) "Admitting it to be false," (says his honor the mayor, in the case alluded to,) "that Cromwell was solvent, and

that Haviland and Field would become his endorsers, it was but a naked falsehood concerning his own circumstances and giving an endorser, and, therefore, not indictable on the ground of obtaining goods by false pretenses. It was in the power of Otis and Swan to inquire for themselves as to the credit of Cromwell, and, also, to ascertain whether Haviland and Field would become his endorsers; and it was, also, in their power to keep themselves completely secured by retaining possession of the goods until the note with the endorsement was furnished. When goods are sold for cash, or for notes, the delivery of the goods, and the payment of the money, or the furnishing the notes, are legally to be considered as concurrent acts; and if, from the confidence placed in the purchaser, or from courtesy, the goods are delivered without the money or the notes, a non-compliance with the contract cannot afterwards be converted into a criminal offense." . . . "If merchants do their business in this manner, and place reliance on the bare assertions of individuals, when they have it in their power to ascertain the truth of their representations, and, also, amply to secure themselves by retaining the possession of their goods, they ought not afterwards to be permitted to make it the subject of a criminal prosecution. It is their duty, as well as their right, to be prudent and circumspect, and thereby to prevent such impositions."

In full accordance with this opinion, are the decisions in George Lynch's case, (1 C. H. R. 139.) Dinah Perry's case, (1 C. H. R. 164.) John Ring's case, (1 C. H. R. 7.) and the doctrine of the English courts, as it is laid down by Mr. East, (2 Eas. Pl. Cr. 818.) and by other writers of eminence. Numerous authorities might be cited; but I deem those I have already alluded to amply sufficient to establish a point so obviously consistent with reason and sound policy.

I admit that this principle is in some degree impugned by certain dicta in the able and elaborate opinion of his honor Mayor Colden, in James Conger's case above cited, (4 C. H. R. 68.) Even the *dicta* of that very able and distinguished lawyer are, no doubt, entitled to the highest consideration. I would beg leave, however, to suggest, that in the case alluded to, the operation of the statute is extended (not merely in my own opinion, but in that of the profession in general,) farther than principle or authority will warrant.

If the court should be of opinion that the indictment cannot be sustained, unless it allege such a pretense as could not be guarded against by the exercise of ordinary care and prudence, let us consider whether such care and prudence have in fact been exercised in the present case.

In the excellent essay of Sir William Jones on the Law of Bailments, ordinary diligence is defined to be such care "as every prudent man commonly takes of his own goods." Hammelin parted with his goods to a mere stranger; a man whom he had never before seen, on his bare assertion that he was a grocer residing at No. 77 Chatham street, when he might, by the inquiry of

a moment, or by merely walking from his vessel to the place in question, have ascertained fully and completely the falsity of the tale. I assert without hesitation, and without fear of contradiction, that this was either gross carelessness or extreme weakness. The former must be the supposition, for every man is presumed to be ordinarily prudent, until the reverse is proved. (Conger's case, 4 C. H. R. 72.)

Hammelin, in his testimony, stated that he acted in conformity to the custom of captains of vessels engaged in the same trade. This, we conceive, can have no effect as an extenuation of his laches; for a custom, to be good, must be neither absurd nor repugnant to public policy; and, if these persons generally conform to an usage so preposterous and deleterious as the one in question, it is high time they were admonished to abandon it by the decision of a court of justice.

It may perhaps be urged in reply, that the question of ordinary diligence rests exclusively with the jury. It would be sufficient for me to say in reply to such a suggestion, that this case was reserved, expressly, for the opinion of the court, on all the points which might be urged in the defense. Independent of this consideration, however, another presents itself, which, we trust, will have much weight in the decision of the question. Uniformity and certainty are the great objects of the law in all its proceedings, even in civil suits. In criminal prosecutions it is of still higher importance. This object can be attained only by the adjudications of a court, and not by the vacillating and uncertain opinions of different juries. I will mention one instance, only, in which courts have taken the same point under their special and exclusive control. I allude to due diligence in the case of notice of protest to the drawers and endorsers of bills of exchange, and to the endorsers of promissory notes. This was at first regarded as a matter for the jury alone. The point was utterly unsettled. It was afterwards considered as a mixed question for the court and the jury. Still no definite principle was established. It was at length held to be a fair subject for the exclusive adjudication of the court, and order and regularity followed. I conceive that the latter rule, by parity of reason, to say the least, should be adopted in the present case. (Kyd on Ex. 80, 81. Doug. Rep. 516, 581. Chit. on Bills, 290.)

If the court should, on the whole, be of opinion that a sufficient false pretense is set out in the indictment, I have still another point to urge in favor of the prisoner, which does not arise on the record, but which I conceive affords a conclusive ground on a motion for a new trial. It clearly appears from Hammelin's testimony, that in parting with his property, he was influenced not *solely* by the pretense alleged in the indictment, but, in a great measure, by a prepossession in favor of the defendant, in consequence of the latter's having made an antecedent purchase, and paid the amount agreeably to his promise.

In the first place, we would observe, that if a man obtains prop-

erty from another in consequence of two or more *"false pretenses,"* operating jointly on the mind of the seller, there can be no doubt; but both must be set out in the indictment. We grant, for the sake of illustration, that the pretense set forth in the present instance is in itself sufficient to warrant a judgment. Let us *then* suppose Dalton to have stated, (as he has done) that he was a grocer, residing at 77 Chatham street, *adding*, that he was employed by J. S. and T. N., persons of known responsibility and opulence, to purchase the goods on their account and credit; could the present indictment, alleging only the one pretense, have been sustained in such a case? Surely not; for if it were only necessary to set out the one, the defendant might be indicted at the succeeding term for obtaining the goods on the other, (to-wit, on the allegation that he was employed by J. S. and T. N.;) and could not avail himself of his plea of *auterfois acquit*, in bar of the second prosecution, inasmuch as it would not appear on the record that the two prosecutions were for the same offense. (1 Chit. Cr. Law, 368, 369. 2 Leach, 717. 1 Eas. Pl. Cr. 522. 9 Eas. Rep. 437. 3 Inst. 213.)

Again, the statute in question is highly penal, and is of course to be construed strictly. I do not insist on the frivolous and ridiculous distinctions which have sometimes been urged, and even sustained, in relation to this subject. I do not allege that a statute enacted to punish stealers of "horses," would not apply to a man who should steal a single horse; nor that an act mentioning dogs, could with propriety be confined, by the technical scruples of grave and learned expositors of the law, to the masculine gender alone. But I do contend, that the counsel for the people is bound to bring his case, substantially and strictly, within the provisions of the act and the allegations of the indictment. These requisitions are not complied with in the present instance, as I shall endeavor to show conclusively to the court.

The statute provides, that "every person who shall hereafter be convicted of knowingly and designedly, *by false pretenses*, obtaining," &c. Now, can it be for one moment contended, that the requisitions of this act are satisfied by evidence that A. B. obtained goods by a certain false pretense, *combined with another act?* Surely not in any case—much less when that *other act*, which operated as a *joint inducement*, is in itself an innocent one. Were it otherwise an individual might be convicted under the statute when the false pretense had *no more influence* on the mind of the original owner of the goods, than another perfectly innocent act of the accused. Nay, the pretense alleged may have had but a small and trifling effect, compared with that of the innocent inducement. Can the court pry into the secret impulses which actuate the hearts of men, and influence their conduct? Can a human tribunal, when a motive is mixed, estimate with mathematical precision the weight of its component parts? It is absurd to pretend it! I would venture to assert, that if Hammelin himself were here, he could not tell which had the most powerful effect in inducing him to part

with his property—the pretense charged, or the prepossession created in favor of the accused by his honesty in the first transaction. The rule then must be, that to bring a case within the construction which the court are bound to give a penal statute, the false pretense set out in the indictment must be the *sole act of the accused, operating on the mind of the person alleged to have been defrauded.*

This doctrine is distinctly recognized in the case of James Conger, above cited, in Abraham Collin's case, (4 C. H. R. 143.) Lucre and Markford's case, (1 C. H. R. 141.) and in William Davis's case, (4 C. H. R. 61.) This last case I conceive to be in point.

I do not deny the authority of Robert W. Steel's case, (5 C. H. R. 5.) There the prisoner had been several times in the store of the person whom he defrauded, prior to the period at which he obtained the goods in question; and the fact of his having seen the prisoner before, operated, in some degree, with that person, as an inducement to part with his goods on credit. Here was a mere *accidental circumstance*, forming no part of the *res gesta;* and which of course could not enter into the decision of the case, whatever weight the party injured might of his own impulse, have attached to it. Nor would it perhaps have been otherwise, if the dress or equipage, the intelligence and information of the prisoner, or the respectability of his connections and associates, had operated in some degree on the mind of the prosecuting witness. Indeed, it has been repeatedly, and I believe, correctly, decided, (particularly in James Conger's case) that these are so vague and intangible, that the court cannot notice them in any way.

In the present instance, however, there is a distinct and substantive act of the prisoner, taking place at the very time of, and immediately connected with, the false pretense alleged—innocent in itself—forming part of the *res gesta*—and constituting an important part of the inducement. Surely, then, the accused cannot be said to have obtained the goods *solely* on the pretense set forth in the indictment; and if this be true, he must, on a new trial, be acquitted.

In the course of my argument, I have cited, for the most part, the decisions of this court. The reasons which have induced me to do so are obvious. As the offense in question is created and defined by our own statute, but few English authorities are at all applicable; and very few cases have been decided in the supreme court of this state. Those, however, which have been adjudged here, are numerous; and have generally been decided on solemn and able argument.

I now consign James Dalton to the protection of the laws; confident that, whatever may have been his guilt in point of morality, the court will remember, in the decision of his case, that "legal forms are the barriers of justice."

THE RECORDER. The law which governs this case, and all others under the statute, which makes it an indictable offense to obtain

property by false pretenses, with intent to cheat, is laid ably down by Mayor Colden, in the case of People v. James Conger, decided May Sessions, 1819, (4 C. H. R., 65.)

That case, and others to which it refers, decide, 1. That the statute has a very extensive application, and embraces a variety of *false pretenses* not punishable at common law. (People v. Johnson, 12 Johns. Rep. 292. Rex v. Young and others, 2 Leach, 574. 2 East's Pl. Cr. 829.) 2. The false pretense must be by words, by writings, or by signs, and cannot consist in mere *show* or *appearance*—by equipage, dress, &c. (Conger's case, 4 C. H. R., 69, 70.) 3. The pretense must be made *before* the property is delivered. (John Stuyvesant's case, 4 C. H. R. 156.) 4. The pretense must be of an existing fact. (Conger's case, 4 C. H. R., 68.) and not a mere promise or representation that such or such a thing shall be done—as to pay cash—that a check shall be good or paid, &c. (Ibid, 68, 69. Stuyvesant's case, 4 C. H. R., 156.) 5. But, where J. S. pretended that he was the captain of a vessel from a foreign port, just arrived, and by that means obtained goods, his offense was held indictable under the statute. (Samuel Smith alias Captain Juben's case, 5 C. H. R., 180.) 7. We are of opinion, that the authorities, on the whole warrant the decision in the case last cited. It is also, supported by the precedents to be found in English works of acknowledged correctness and high reputation. (Cr. C. Comp., 303.) This is a precedent where the defendant pretended that he was a merchant of great fortune, and was a housekeeper, residing at Penjo Common. The last *count* charged the *pretense* that he was a merchant *only*. (6 Went. S. P. Index., tit. "Frauds," Eng. ed. 2 Starkie, 473. 3 Chitty's C. L. 1006., Eng. ed.) Applying the principles above stated to Dalton's case, the court is satisfied that the pretense charged in the indictment, i. e., "that he was a grocer residing in Chatham street," is sufficient to bring him within the statute. 7. The pretense must not be so absurd and irrational that no man of common sense would believe it to be true. But still it need not be so cunning and artful as to deceive a man of ordinary caution. (Abraham Collin's case. 4 C. H. R. 149. Conger's case, ib. 71.) 8. We are of opinion that, whether the false pretense be of a nature calculated to deceive a party or not, is a question for the jury. (Abraham Collin's case, 4 C. H. R. 143. 149. Conger's case, 4 ib. 72. 2 East's Pl. Cr. 828.)

We are of opinion, therefore, that the second ground taken by the counsel for the prisoner is not tenable, and, accordingly, the *motion in arrest of judgment is overruled.*

9. The *false pretense* must be the *sole inducement* for parting with the goods. (John Davis' case, 4 C. H. R., 61. 2 East, 831.) 10. Though such false pretense must be the *sole inducement*, and must be fully set forth in the indictment, yet accidental circumstances, which in conjunction with the false pretense influenced the delivery, need not be set out. (Robert W. Steel's case, 5 C. H. R., 5—7.) As the dress of the defendant, having seen him before, and the like.

We are satisfied, from an attentive examination of the authorities, that dress, style in appearance or living, keeping genteel company, resorting to fashionable places, and, perhaps, even former dealings with the party injured, though these circumstances may facilitate the fraud, need not be set out if they be not necessarily connected with the false pretense, and if they do not form part of the fraudulent scheme or *res gesta.* In such case they do not, in judgment of law, constitute any part of the inducement, and, consequently, need not be laid in the indictment.

In this case, however, the witness is understood to have said in substance, that he would not have trusted Dalton on the false pretense *alone;* and as the motive which, in addition to the false pretense, operated on the mind of the witness when he gave credit to Dalton, may have constituted part of the *res gesta;* and as this was one of the points reserved for the opinion of the court on its materiality, we, on this ground, direct a NEW TRIAL.

THE TRIAL OF JOSEPH T. BUCKINGHAM, FOR LIBEL, BOSTON, MASSACHUSETTS, 1824.

THE NARRATIVE.

The Consul of the Russian Empire at the city of Boston, one Alexis Eustaphieve, had in some way incurred the displeasure of a newspaper of that city, The New England Galaxy. In its issue of September 1st, 1820, it referred to a young lady who it said was a most accomplished performer on the piano but whose skill was due to the heartless cruelty of her father who was sacrificing all the future prospects of his child at the altar of ambition. In its issue of November 30, 1821, it referred to a big bear who had a bear for a wet-nurse, who was weaned on fishes' roe and fiddlehead and whose amusements were fishing and fiddling. And again in its issue of November 7th, 1823 it gave an account of a disturbance at a ball in the city on the previous Tuesday evening where the "rugged Russian bear was a conspicuous actor in the farce which had well-nigh turned out to be a tragic-comedy in consequence of his attempting to jump with his cocked hat and all down the throat of one of his opponents. We give no opinion on the merits of the controversey but leave it to the decision and final adjudication of him who while acting as the representative of the Greatest Monarch in the world, the magnanimous Alexander, the autocrat of all the Russias, the honorary member of the Massachusetts Peace Society does not deem it a derogation from his high vocation to become a party in the quarrels of dancing masters and fiddlers."

The Russian Consul alleging that all three of the articles referred to him the Grand Jury returned an indictment against Joseph T. Buckingham, the editor and publisher, for libel. There were three counts, the first upon the publication

of September 1st, the second upon that of November 30th and the third upon that of November 7th.

The trial had barely begun, when the Attorney-General was obliged to abandon the third count for it was discovered that while the article said the ball took place on Tuesday evening, the indictment omitted the word "evening" and as this was the only one of the publications which described the Russian Consul the prosecution was obliged to call witnesses to prove that he was the person referred to in the others.

The jury being in doubt as to whether Mr. Eustaphieve was the cruel father of the first article—for there were other men in Boston who had daughters who excelled as musicians—acquitted the publisher on the first count but convicted him on the second.

THE TRIAL.[1]

In the Municipal Court of Boston, Massachusetts, January, 1824.

HON. PETER O. THACHER,[2] *Judge.*

January 9.

An indictment was found by the Grand Jury of Suffolk County at the November term, 1823. It contained three counts. The first count charged that *Joseph T. Buckingham* did on Sept. 1, 1820 print and publish in a Boston newspaper named *The New England Galaxy* of which he was editor and publisher a false and malicious libel concerning Alexis Eustaphieve the Russian Consul in Boston and concerning "the conduct of said Alexis as a parent and concerning the manner of treatment by him of his daughter." The second count charged Buckingham with printing in the same newspaper of November 30, 1821 another libel against Eustaphieve containing this language: "His birth and Infancy; sucks a bear; his wet nurse licks him; weaned on fish's roe and fiddlehead; his amusements fishing and fid-

[1] Wheeler's Criminal Cases, see 1 Am. St. Tr. 108. Thacher's Criminal Cases, see 2 Am. St. Tr. 858.

[2] See 2 Am. St. Tr. 859.

dling; a set-to between the big bear and a dandy.'' The third count charged that Buckingham in the same newspaper of November 7th, 1823 printed a false account of a disturbance at a ball on Tuesday, November 4th at which it said: ''the rugged Russian Bear was a conspicuous actor in the farce which had well-nigh turned out to be a tragic comedy, in consequence of his attempting to jump, with his cocked hat and all, down the throat of one of his opponents.[3]''

The defendant pleaded *not guilty.*

James T. Austin[4] for the Commonwealth; *Benjamin Gorham*[5] and *Samuel L. Knapp*[6] for the defendant.

The Jurors for the Commonwealth of Massachusetts on their oath present, that Joseph T. Buckingham, of Boston, aforesaid, Printer, on the first day of September, in the year of our Lord, one thousand eight hundred and twenty,—at Boston, aforesaid, with force and arms, maliciously contriving and intending to injure, aggrieve, villify, scandalize, and defame the good name, fame, and reputation, of one Alexis Eustaphieve, who was then and there residing in said Boston, and was then and there a Consul accredited to the United States of America, from His Majesty the Emperor of all the Russias, with whom the said United States then were, and still continue to be, at peace, and intending as much as in him lay, to bring the said Alexis into *contempt, hatred, infamy,* and *disgrace,* did compose, print, and publish in a certain newspaper, called New-England Galaxy and Masonic Magazine, whereof the said Buckingham was editor and publisher, a certain false, scandalous, and malicious libel, and did cause and procure to be published in said newspaper, the said certain false, scandalous, and malicious libel of, and concerning the said Alexis, and of and concerning *the conduct of the said Alexis as a parent, and of, and concerning the manner of treatment by him of said Alexis' daughter,* in which said malicious, false, and scandalous libel is contained, among other things, the false, scandalous, and malicious words following, that is to say, "We in this part of the union boast much of our skill in music, but a few of us who have been in Europe are unwilling to see this divine art treated with such little respect as to witness the total want of taste, expression, and feeling in our musical friends. We should no longer award the palm to those [meaning among others the said daughter of said Alexis] who by incessant drilling under a cruel

[3] See ante p. 505.
[4] See 1 Am. St. Tr. 44.
[5] See post p. 531.
[6] See post p. 531.

and heartless master, [meaning said Alexis,] have attained a rapidity of fingering which serves only to astonish for a moment, but which produces no effect upon the feelings, except pity for the almost lifeless automaton [meaning the said daughter of said Alexis] whose haggard cheeks and feeble frame evince the daily drudging to which [meaning the said daughter of said Alexis] has been subjected by threats, promises, and flattery; a feeling which is not alleviated by the smallest ray of kindness or affection in the parent, [meaning said Alexis,] who [meaning said Alexis] sacrifices all the future prospects of a child's [meaning the said daughter of said Alexis] happiness at the altar of ambition, a virtuous and enlightened community should frown indignation and contempt upon the tyrant, [meaning said Alexis]" to the great damage of said Alexis, to the pernicious example of all others in like case offending, and against the peace of said Commonwealth.

And the jurors aforesaid, on their oath aforesaid, do farther present, that said Joseph T. Buckingham, at said Boston, with force and arms, on the thirtieth day of November, in the year of our Lord eighteen hundred and twenty-one, farther contriving and intending to injure, scandalize, villify, and defame the good name, fame, and reputation of said Alexis Eustaphieve, then residing in said Boston, and performing the duties of a Consul of the Emperor of all the Russias, with whom said Commonwealth then was, and yet continues to be, at peace, and maliciously contriving and intending as much as in him lay, to bring the said Alexis into public ridicule, contempt, and disgrace, did compose, print, and publish, and did cause and procure to be composed, printed, and published in a certain newspaper, entitled, New-England Galaxy, a most wicked, false, scandalous, and malicious libel of, and concerning, the said Alexis, and of, and concerning the life and opinions of said Alexis; which said libel contains, among other things, the false, scandalous, and defamatory words following, that is to say, "The life and opinions of U. Stuffy, [meaning said Alexis,] 1 vol. 4to imperial foolscap, bound in Russia]—contents, chap. 1: His [meaning said Alexis] birth and infancy, sucks a bear, Romulus and Remus—His [meaning said Alexis] wet nurse licks him [meaning said Alexis]—weaned on fish's roe and fiddlehead—How he [meaning said Alexis] gets in on every thing—His [meaning said Alexis] amusements, fishing and fiddling."

And, also, the following false, scandalous, and defamatory words, that is to say, "Chap. VI. His [meaning said Alexis] dislike to Caledonian literature, and why—His [meaning said Alexis] being taught to dance to the Scotch fiddle, and the superiority of the latter to his [meaning said Alexis] own.—Burnt bear dreads hot iron—Condemns the author of Waverly, supposing him to be a Scot. A set-to between the big bear [meaning said Alexis] and a dandy—Pro and con. concerning the same,"—to the pernicious example of all others, and against the peace of said commonwealth.

And the jurors aforesaid, on their oath aforesaid, do further pre-

sent, that said Joseph T. Buckingham, at said Boston, with force and arms, on the seventh day of November, in the year of our Lord eighteen hundred and twenty-three, further continuing his malicious disposition, and contriving and intending, falsely and maliciously, to injure and destroy the good name, fame, and reputation of the aforesaid Alexis Eustaphieve, the said Alexis then residing in said Boston, and being the Consul of the Emperor of the Russias within said Commonwealth, between whom and said Commonwealth there then was a firm peace, and to cause a belief that said Alexis engaged in quarrels unworthy his said station and office, did compose, print, and publish, and cause and procure to be composed, printed, and published in a certain newspaper, called New-England Galaxy, a certain false, scandalous, malicious, and defamatory libel of and concerning the said Alexis, and of and concerning the conduct and behaviour of the said Alexis, at a certain place in said Boston, commonly called Concert Hall, on Tuesday, the fourth day of said November, at a certain exhibition and ball there given by certain persons, called Parks and Labasse, and after the same, which said false, scandalous, and malicious libel contains the false, scandalous, and defamatory words following, of and concerning said Alexis, and of and concerning his conduct at said place, called Concert Hall, that is to say:—"Record of fashion.—The pupils of Messrs. Parks & Labasse gave a splendid exhibition of dancing at Concert Hall on Tuesday. The elegance of attitude, and the gracefulness and ease of their movements, afforded a proof of the science, skill, and taste of their instructors, and elicited the approbation of a crowded and fashionable concourse of spectators. A communication respecting this exhibition and ball has been received, the chief object of which is to give the details of an unpleasant and disgraceful disturbance which occurred in the course of the evening. The history would not do much honor to the parties concerned, and we [meaning said Buckingham] decline its publication at present, though it is but just to the character of Mr. Parks to say, that we [meaning said Buckingham] have not heard that any blame was attached to his conduct on the occasion, but that on the contrary, he kept as much aloof as possible from the scene of anger and confusion. The rugged Russian bear, [meaning said Alexis] it is said, was a conspicuous actor in the farce which had well nigh turned out to be a tragi-comedy, in consequence of his [meaning said Alexis] attempting to jump with his [meaning said Alexis] cocked hat and all down the throat of one of his [meaning said Alexis] opponents. We [meaning said Buckingham] think with our [meaning said Buckingham] correspondent, that it is best at the present moment to give no opinion on the merits of the controversy, but leave it to the decision and final adjudication of him [meaning said Alexis] who [meaning said Alexis] while acting as the representative of the greatest monarch in the world, the magnanimous Alexander, the Autocrat of all the Russias, the honorary member of the Massachusetts Peace Society, the grand Pacificator of Europe, does not deem it a derogation from his [meaning said

Alexis] high vocation to become a party in the quarrels of dancing masters and fiddlers,"—meaning that said Alexis was a party in the quarrel of dancing masters and fiddlers at said Concert Hall, at the time aforesaid, and then being Consul as aforesaid, against the peace of said Commonwealth.

Mr. Austin. The indictment contains three distinct counts, each of which is a distinct, independent indictment and consequently a conviction or acquittal on either would not amount to a conviction or acquittal on either of the others. But although in the indictment it is averred that Mr. Eustaphieve was the Russian consul, resident here and duly accredited, it is only introduced as a description of his person and it is not intended to urge that the publications are libels on his official character.

THE EVIDENCE.

Jefferson Clark. Am a printer and in the office of the Boston Galaxy since 1817 except a few months. My name appears in the paper as the printer.

Mr. Austin. Have you any financial interest in the paper?

Clark. I decline to answer.

JUDGE THACHER. He is not bound to answer if the answer would tend to criminate himself, but he must answer every question which relates to Mr. Buckingham's concern in the publication.

Clark. Mr. Buckingham owns the paper; he usually corrects the proofs; when he is absent I do. The copy shown me (Sept. 1st, 1820) is I think from our office.

Mr. Gorham. At the time of the first publication, in September 1820, was not defendant absent from town and had no concern in the publication of that number?

Mr. Austin. I object. The defendant having been proved to have been the editor and publisher of the paper generally, is legally answerable for its contents although he might have had no concern in that particular number.

JUDGE THACHER. The question is proper, for if it shall appear that defendant on leaving town directed his servants to exclude the article complained of and it was afterwards inserted by them without authority and against his orders, that fact would go to the intent and would be proper for the consideration of the jury.

Clark. At that time Mr. Buckingham was away from the office a good deal; he was in the country with his family owing to a domestic calamity. The copy shown me of Nov. 30, 1821, I believe was printed at our office.

Ezekiel Morse. Am a servant of Mr. Eustaphieve. The newspaper produced I purchased at the Galaxy office and delivered it to my master.

John S. Ellery. I read the article in the Galaxy.

Mr. Austin. In your opinion did the piece of September 1, 1820, refer to the Russian consul?

Mr. Gorham. I object to this question. The belief or opinion of the witness is not evidence, as held in Vanvechten v. Hopkins, 5 Johns. 211.

JUDGE THACHER. The question

is proper; although the belief of the witness alone avails nothing, yet he is bound to state the facts on which his belief is founded, which are proper to go to the jury. This evidence is not to prove an innuendo, but the averment that the defendant published the piece of and concerning the Russian consul.

Mr. Ellery. I have known the Eustaphieve family since their arrival here, fourteen years ago; have taken an interest in them and am their friend. When I read the article I thought at once that it referred to the consul and his daughter. The young person is only twelve years old but is already distinguished as a prodigy of musical talent, particularly for her execution on the piano-forte. I at once carried the paper to him; he read it and it seemed to wound his feelings deeply. Mr. Eustaphieve is a kind father and most proud of and indulgent to his children.

Bryant P. Tilden. Have known the consul and his family for some time. As soon as I read the Galaxy of September 1st I recognized the parties intended as him and his daughter. Could think of no other father and daughter in the city at this time to whom it could refer. Am in the insurance business; at our offices it was discussed a good deal and everyone took it to allude to the Russian consul and his daughter. She is an extraordinary genius. Dr. Jackson the eminent professor of music would sit and listen to her for hours together. Have always heard Mr. Eustaphieve spoken of as a most affectionate father.

William Coffin. Reside in Boston. In my opinion the piece in the September 1st Galaxy refers to the Russian consul and his daughter. I know his great fondness for music and his daughter's remarkable talents. They had been at that time a subject of much conversation among both professional and amateur musicians in Boston. Have always considered Mr. Eustaphieve a kind and indulgent parent.

Mr. Austin read the articles in the issues of the Galaxy of Sept. 1, 1820 and Nov. 30, 1821.

Mr. Gorman objected to the reading to the jury of the piece in the Galaxy of Nov. 7, 1823, which was the third libel complained of, on the ground of a material variance. The word "evening," which is in the original publication, is omitted in the indictment after the word "Tuesday."

JUDGE THACHER. In pronouncing the judgment of the court in the case of *Rex* v. *Beach*, (Cowp. Rep. 229) on an application for a new trial, in an indictment for perjury in an affidavit, upon the ground of a material variance between the affidavit and the indictment, the letter *s* being left out in the word "understood;" Lord Mansfield says, "we have looked into all the cases on this subject; some of which go to a great degree of nicety indeed. The true distinction seems to be taken in the case of *The Queen* v. *Drake*, (2 Salk. 660,) which is this, "that where the omission or addition of a letter does not change the word, so as to make it another word, the variance is not material. To be sure, a greater strictness is

required in criminal prosecutions than in civil cases; and in the former the defendant is allowed to take advantage of nicer exceptions."

Dr. Drake's case, which is thus recognized with so much respect by the court of King's Bench, was an information for a libel, in which it was undertaken to set forth the libel "according to the following tenor," and in setting forth a sentence of the libel, it was recited with the word "nor" instead of "not;" but it is added, that the sense was not altered thereby. The first point decided by the court in this case, was that the word tenor means a transcript or a true copy. In the second place it was held, that this was not a tenor by reason of the variance, for "not" and "nor" are different —different in grammar and different in sense. And Powys, J. held, as to the point where literal omissions, &c. would be fatal, that where a letter omitted or changed makes another word, it is a fatal variance. Otherwise, where the word continues the same. In the last place, Holt, C. J. said, that in pleading there were two ways of describing a libel, or other writing, by the words, or the sense. 1. By the words, as if you declare of a libel, "the tenor of which is as follows," or "in the words following," you describe it by its particular words, of which each is such a mark, that if you vary, you fail in making good their description. Or, 2. You may describe it by its sense and meaning. Thus it is a good information to show, that the defendant made a writing, and therein said so and so, in which case exactness in words is not so material, because it is described by the perfect substance of it.

I apprehend that the principle of Drake's case is applicable to the present question. What is undertaken to be done in this third count of the indictment? To set forth the libel "in the following false, scandalous and defamatory words," which is in effect to set forth the tenor, or a true copy of them. In this recital, the word "evening" is omitted. It was justly said by the counsel for the defendant, that "Tuesday" includes both day and evening; whereas the writer by using the word "evening" meant to limit himself to that part of the day. The rule of law is strict, and applies to words as well as to sentences. We must adhere to strict rules. This is not unreasonable, where it is easy to be correct; and it is required, that the court may see upon the record the whole matter which is charged as a libel. I am of opinion that the variance is fatal, and therefore the piece cannot be read to the jury.

Mr. Austin entered a *nolle prosequi* as to the third count.

THE DEFENSE.

Mr. Knapp. Gentlemen of the Jury: The articles complained of are not libelous; the first could have no allusion to Mr. Eustaphieve and the second was a good-natured and harmless piece of satirical writing, which only ridiculed the writings of the complainant and was common and justifiable. The piece complained of in the first count of the indictment, was a piece of general criticism; it con-

tained no allusion to the prosecutor; it was general in its intent and tendency. The prosecutor had no more right to apply the remarks to himself, than any man who had given a piece of bread or a cup of water to a perishing fellow creature, had to appropriate to himself all the eulogiums which ages had bestowed on the charitable and philanthropic; no more than an individual miser had to make a personal application of all the invective and reproach which have been bestowed on niggardliness and avarice. It could not allude to Mr. Eustaphieve and his daughter, this was evident. The testimony of Messrs. Ellery, Tilden, and Coffin, all proved that he was a kind and indulgent father. The publication alluded to, and concerned, a general system of education, where severity was used to promote improvement.

In respect to the piece charged as libellous in the second count of the indictment, it could not be believed for a moment, that the jury could consider it as a libel. It was a mere bagatelle—such as is found every day in the newspapers and reviews, and which no man but one of extreme excitability ever thinks of resenting seriously. It *might* allude to Mr. Eustaphieve; but it amounted to nothing more than an attempt to raise a laugh at his writings. Mr. Eustaphieve was an author—he had written a play—sundry political works—dramatic criticisms—and an epic poem. His taste and opinions differed from those of the Americans, and he had attempted to correct what he supposed to be our bad taste. The public did not much approve his epics; but we hope posterity will do him justice. Homer was not rewarded in his own day and by his own countrymen, but later ages had given him the praise which was due to him. Mr. Eustaphieve, in the piece in question, was ridiculed as an author. There was no imputation on his official or moral character; there was no charge, which if true, could subject him to any sort of legal punishment; nothing which could in the least degree affect his standing in society. It might be true, that he was there alluded to by the word *bear*. But this was not a term of reproach. The term signified, figuratively, strength and wisdom. *Bear*, in hieroglyphics, according to *Bailey*, was used by the ancient Egyptians, to represent a good proficient when time and labor has brought to perfection, because bears are said to come into the world with misshapen parts, and that their dams do so lick the young, that at last the eyes, ears, and other members appear. Shakespeare making king Henry say,

> Call hither to the stake my two brave *bears*,
> Bid Salisbury and Warwick come to me, &c.

E. Frothingham. Reside in Boston; read the article in the Galaxy the day after it appeared. Did not think it referred to Mr. Eustaphieve. The reason was that I knew a man who formerly lived here—his name was Lewis—who had two or three children, two boys and a girl, I think, remarkable for their musical acquirements. He worked them hard, his system of

discipline was very severe; have seen him, even at a large party strike one of his children who made a mistake in performing. People talked about this a good deal; everybody called him most cruel.

Thomas Minns. Remember Lewis and his children and how stern he was with them. When I read the Galaxy article I thought they were after Lewis.

John Dodd. Knew Lewis and his three children and thought the article alluded to him and his daughter as he was a cruel parent.

Cross-examined. The performances of the boys were not remarkable, nor the girls either; they were good performers, but the daughter never appeared in public to my knowledge. Can't say that I think now on further consideration that the article alluded to Lewis. Recollect that Lewis left Boston with his family some time in 1820.

John Parker. Know the prosecutor.

Mr. Gorham. Did not the Russian consul attend at the theatre some years ago and assist and direct in getting up a ballet for a public exhibition?

Mr. Austin objected.

Mr. Gorham. Did not John Parker know the prosecutor; and the Russian consul attend at the theatre, some years ago, and assist and direct in getting up a ballet for a public exhibition?

Mr. Austin objected.

JUDGE THACHER. This question is not pertinent to the issue. The government could not be aware of such inquiry, nor ready to meet it. It tends likewise to put the Russian consul on trial for facts, calculated to reflect on him, and to injure him, when he is not on trial, and cannot be presumed to be ready to defend himself. He may deny the fact. He may say he was out of the country at the time this ballet was got up. Now it would be against all principle that *he*, confiding his interest in the inquiry, should not have notice of the accusation, and be prepared to encounter it. But this is not the time nor place for such inquiry, and the court will not admit it.

From the course of the defense marked out by the opening counsel, it seems to the Court that it is proposed by the defendant to offer the truth in evidence as a justification of the libellous matter. Suppose that all you say of the Russian consul is true, it does not make him a "public man." He did no more than any citizen might do, and he is not here seeking redress for a wound inflicted on his consular character. The defendant has a right to argue on the whole piece, that it was merely a criticism on an unfortunate writer, and if the jury consider it no more than legitimate satire and criticism, it will be a good answer to the charge.

THE SPEECHES TO THE JURY.

Mr. Gorham. Gentlemen of the Jury: We regret that the testimony, which had been thought material by the defendant's counsel, should have been excluded by the court. It was

the intention to have shown, by undoubted testimony, that the prosecutor had subjected himself to animadversion in the newspapers as an author and a critic, assuming the office of a dictator in matters of taste, and endeavoring to direct our public amusements, and give a tone to public sentiment; that, as such, he had no right to complain, if he were dealt with as all others are who follow the same course. This prosecution, was not commenced in order to preserve the public peace, nor was it necessary, to that end, that is should have been brought forward at the present time. It was instigated by anger and resentment on the part of the prosecutor. Else why had the attorney for the commonwealth and eight or ten successive grand juries, whose duty it is to prosecute all breaches of the peace, been silent on the subject for more than three years? It is evident, that the temper of the complainant had incited him to procure the present indictment, and he was now the aggressor, and committing an act which tended to a breach of the peace. We deny that the first piece alleged to be libellous had any allusion to the Russian Consul. It was a piece of criticism, general in its nature and object, and it had been proved that there was another individual in Boston at the time of its publication, to whom the censure would equally apply. Admitting that it did allude to him, the defendant ought not to suffer for its publication; for he was much absent at the time, and knew but little of what was inserted in the paper, owing to sickness and death in his family. The very paper which contained the alleged libel, contained notice of the death of one of his children, and an apology for his neglect of editorial duties.

As to the second piece, it was no more a libel than was the piece called *My Pocket Book* on Sir John Carr, which Lord Ellenborough had scouted out of court. It may be admitted that it was coarse and rude; but it could not injure the reputation of any man; it had very little wit in it; and I should rather be the *subject* than the *author* of it. If it alluded to Mr. Eustaphieve at all, it alluded to him as a

writer. He had written some works, which had been severely handled by the Edinburgh Reviewers, and he had replied, in a strain which indicated that he was not pleased with their criticisms. This was what was meant by "his dislike to Caledonian literature—and why." His uneasiness under the lash they had inflicted was pretty evident, and this was all that was intended by "dancing to the Scotch fiddle." The latest of pieces complained of appeared more than two years ago; a circumstance which precluded the prosecutor from claiming any redress in a civil action.

Mr. Austin. Gentlemen: The defendant being proved to be the editor and proprietor of the Galaxy, it is of no consequence, whether he was in the office at the time of the publication or not. He was responsible for all that appeared in the paper. It is for the jury to consider whether the articles complained of were libellous; and that the first one was so, no one doubted. It has been shown that it could apply to no one else, but the Russian Consul, and it was calculated to wound him in the tenderest point, by holding him up to the indignation of the public as a cruel and heartless father. The piece complained of in the second count is also grossly libellous; and the writer could have had no other object than to expose Mr. Eustaphieve to public scorn and ridicule.

January 10.

Judge Thacher: Gentlemen of the Jury, The defendant, Mr. Buckingham, is charged with the offense of having composed, printed, and published two libels against Alexis Eustaphieve, the Consul of his Russian Majesty residing in this city, with the malicious intent to defame and villify him, and bring him into contempt, hatred, and ridicule. The first relates to his conduct as a parent; the second, to his life and opinions. The third count has been withdrawn since the commencement of this trial, and must be wholly disregarded by you. In legal contemplation the two counts are several indictments. The defendant may be convicted on one, and acquitted on the other; or you may render a general verdict

on both, as you shall finally consider yourselves justified by the law and the evidence. It has not been controverted, that the pieces complained of are set forth in the indictment correctly.

You must be satisfied before you can find a verdict against the defendant, that the pieces which are complained of were published by him—that they relate to the Russian Consul and are libels upon him—and that they were published by the defendant with the malicious intent to defame the Russian Consul, and to bring him into hatred, contempt, and ridicule.

On you devolves the duty "to decide at your discretion, by a general verdict, both the fact and the law involved in this issue." But in committing the case to you, it belongs to me to expound to you, with candor and simplicity, the principles of law which are applicable to it, with the view of assisting you in the performance of your duty, and to enable you to come with confidence to a correct result.

Trials of this kind are rare, and, perhaps, from that cause they excite a degree of interest which is out of proportion to the offense. But if from any cause you are conscious of any undue interest, or feel any prejudice, you will suffer me to caution you to dismiss them from your bosom, as the enemies of good judgment. Though this case, as most other criminal prosecutions, might have had its origin in the complaint of an individual; yet you are not trying the complaint of an individual, but a presentment of the grand inquest on their oaths, who are bound by law "diligently to inquire and truly to present all crimes and offenses committed within the body of this country." This is not therefore a vindictive suit by the Russian consul, to recover damages for wounds inflicted on his character and feelings. So far as these are concerned, the remedy is by a civil process in another court, and whatever may be the event of this prosecution, the personal injury and the civil redress will in no degree be affected.

The questions, what is a libel, and why it is deemed a public wrong, are answered in a clear and satisfactory manner, by

our supreme judicial court in the case of the *Commonwealth* v. *Clapp,* (4 Mass. 163.) The opinion in that case was pronounced by the late Chief Justice Parsons, who was a most humane judge of criminal law, and always gave to a party on trial the full benefit of his learning and talents, to screen him from an illegal conviction.

"A libel is a malicious publication, expressed either in printing or writing, or by signs and pictures, tending either to blacken the memory of the dead, or the reputation of one who is alive, and expose him to public hatred, contempt or ridicule." "The cause why libellous publications are offenses against the state, is their direct tendency to a breach of the public peace, by provoking the parties injured, and their friends and families to acts of revenge, which it would not be easy to restrain, were offenses of this kind not severely punished."

A citizen would be very apt to consider himself justified in revenging himself on one who had maliciously defamed him, and rendered him an object of hatred, contempt or ridicule, if the society to which he belonged, did not punish the offender. Our law is not defective in this particular, and all pretense for private violence is removed. "A man appealing to the public justice for redress of an injury, must think himself acquitted in his reputation, when he sees that the state resents as an insult to itself a wrong done to his person, property or character." Private revenge for injuries received is a violation of that first principle of society, by which each member agrees to give up a portion of his natural rights, to secure the more perfect enjoyment of the remainder. No man under the protection of the law, is to be the avenger of his own wrongs.

It requires no arguments to prove, that a libellous publication is not less likely to produce violations of the peace, because it is founded in truth. And therefore, however it is, that if a man publishes an injurious truth of another, the truth of the publication will be a justification in a civil action for damages; yet such defense will not avail in an indictment for a libel, except in the case, which arises from the genius of our constitution, "of publications respecting candi-

dates for a public office, conferred by the election of the people, and of persons holding a public elective office;'' the people having an interest in the publication of truths relating to their public servants. The exception extends also to the case ''of complaints to the legislature for the removal of an unworthy officer,'' and to some other cases, where the purpose being first proved to be justifiable, that is, done with good motives and for justifiable ends, a defendant might be permitted to give in evidence the truth of the words. I think that this exception secures to the public all necessary intelligence, upon all proper occasions, and would protect printers in publishing facts relating to individuals, in which the community has an interest, in many of those cases, to which the honorable and learned counsel for the defendant alluded in his closing arguments, where such publications should not carry on their front the palpable intention to defame.

Considering the interest which seems to be attached to this subject, you will permit me to detain you for a moment longer, on the law of libel, which I consider has been established in this commonwealth on principles of the highest wisdom. The great struggle in England forty years ago, on this subject, arose from the judges having arrogated to themselves the right exclusively to decide in all cases the question, whether a publication complained of were a libel or not, and from their directing the jury to pronounce a general verdict of guilty or not guilty, as they should be satisfied, that the defendant did or did not publish the paper, and as it was or was not truly set forth. The British nation justly considered this, as stripping the subject of his defense of a trial by jury, and the struggle resulted in the act of 32 Geo. III. c. 60, which declared:

"That on every trial for a libel, the jury sworn to try the issue, might give a general verdict of guilty or not guilty, upon the whole matter put in issue, and should not be required or directed by the court or judge before whom the trial was had, to find the defendant guilty, merely on the proof of the publication by such defendant of the paper charged to be a libel, and of the sense ascribed to the same in the indictment."

During the debates on this bill in the House of Lords, the twelve judges, upon a question put to them, declared, "that the truth or falsehood of the written papers are not material to be left to the jury upon the trial of an indictment for a libel; and that it made no difference, whether the epithet 'false' were or were not used in it." The greatest lawyers, statesmen and orators of the English nation took a part in this interesting discussion. But they were content to restore to juries their right of deciding both on the law and the fact, as it undoubtedly existed at the common law. No one contended that, on an indictment for a libel, the truth of the matter should be a defense to the charge; and we do not find in the statute itself, that there is any provision on this point. And yet, gentlemen, the great Lord Erskine, the champion of English liberty, of the rights of the press, and of the trial by jury, and who has just closed his mortal career, observed, in the house of lords, upon a solemn occasion, so late as the year 1808, "that the law of libel had been brought as near perfection as was perhaps possible; though in earlier life, he did not think that the practice of the courts was right in some points, yet he had lived to see it remedied." (30 Howell, State Trials, 1344.)

In this commonwealth the citizens enjoy, in cases of this description, every privilege, which is secured to the subjects in Great Britain, together with the further right, that the truth shall avail as a justifiable defense in certain cases, arising under our peculiar political institutions, to which I have before alluded. The law on this subject was settled, on great consideration, in the case against *William Clapp,* by the supreme judicial court, to which an appeal lies in all cases from this court, and which, by its prerogative, corrects the errors of all other judicial tribunals of the commonwealth. The decisions of that court are reported by a public officer, under the authority of the legislature, as the most authentic expositions of the law, for the purpose of diffusing among the citizens, information on subjects of the greatest interest. The solemn decisions of that court are considered as binding on the several judges, at their nisi prius terms, and on all

inferior tribunals. I freely avow, that I consider them as binding on me generally, upon the principle, that what is determined in that court upon solemn argument, establishes the law, and is a precedent for future cases in that, and in all inferior tribunals. *Eadem lex Romæ, eadem Capuæ.* It is the right of the citizens to be governed by certain laws. Now what certainty would there be in the laws, if a different rule of interpretation on any subject should be adopted in this court from what prevails in the supreme judicial court on the same subject? It would at once take from the minds of the citizens all confidence in the administration of justice here.

The law, as it is laid down by the supreme court in *Clapp's* case, is not in violation of the constitution. That instrument is to be construed so as that its various provisions may harmonize with each other. While it declares, "that the liberty of the press is essential to the security of freedom in a state, and ought not therefore to be restrained in this commonwealth," it guarantees to each citizen "life, liberty, property and character." It declares, "that it is essential to the preservation of these, that there be an impartial interpretation of the laws and administration of justice;" and it lays down, as the first principle of our government, "that all shall be governed by certain laws for the common good." How long would "life, liberty, property and character" be safe, and what would be their value, if the press were not under the restraints of law? The liberty of the press is not confined to publishing truth. It is as large as human liberty is in any other respect. We are free to act, nor has it yet been thought an infringement of civil liberty, that we are answerable for our actions and liable to punishments for violations of the law. So the liberty of the press consists in the being free to publish anything, true or false, without previous restraint, subject only to the control of the law for the abuses of that liberty.

Among the Romans, it was at one period a part of their polity, to appoint a censor of the public manners. Among other high duties of this officer, he had the right to inspect

the public and private character of the citizens, and might degrade even a senator from his rank, if he rendered himself an object of public odium or contempt. Modern governments have not seen fit to imitate this institution. In our commonwealth no individual may erect himself into a sort of domestic tribunal, to try and condemn those, who incur his disapprobation, by any singularity of manners, peculiarity of sentiment or character, or even by any defect in morals. Nor may he with impunity presume to hold up his fellow-citizens to public odium, contempt or ridicule.

These principles of law, handed down from antiquity and qualified by our own wise institutions, have, I trust, governed me in deciding some very important questions, which have arisen in the course of this trial; and it will not be safe for you, gentlemen, to depart from them, when you retire to make up your final opinion, let them operate as they may, either for the government or for the defendant. Hard would be the task of jurors, and uncertain would be the tenure of all our rights, if the decision of cases should depend on the will of jurors, not guided by the known and established rules of law.

From this general survey of the law, you will return with me, gentlemen, to the present case, of which I will endeavor to take a summary view. And first, are you satisfied, from the evidence, that the defendant published the pieces which are complained of as libellous? Although the defendant is charged with having "composed, printed and published," it will be sufficient to authorize your verdict, if you believe the fact of publication merely. To this point you have the testimony of Jefferson Clark, who says, that he has been engaged in the printing establishment of the defendant from the year 1817 to this time, with the exception of a short absence in the year 1822; that the defendant is the publisher and editor of the New England Galaxy; that he usually corrects the press; that he, the witness, sometimes, but very rarely, and only in the absence of the defendant, performs that duty. When shown the number of the Galaxy of September 1, 1820, which contains the first article complained of, he said that he be-

lieved it to be a paper, which was printed in the office of the defendant, because it resembled the newspaper printed by him; but he would not undertake to swear to the identity of the publication. He says, that at and about that time, the defendant was detained at home, and was a good deal absent from the office, being with his family in the country, who were at that time visited with a domestic calamity. But he was in and out of the office, and he left no substitute to correct the proof. Now as the paper was printed in the office of the defendant, by his servants, and for his profit, and as he has never disavowed it, he is in law answerable for the contents.

The paper which contains the alleged libel, was purchased at the defendant's office in September, 1820, by Ezekiel Morse, the servant of the Russian consul, and carried to him and marked at the time. This fact alone is evidence of publication, it being a reasonable and well known principle of law, that if a man sells a libel by his servant, it is considered as evidence of a publication by him, unless he show that the servant acted without or against his authority. Books sold in any shop or warehouse, though not immediately by the master, but by his servant, or one entrusted with the sale of such books, is *prima facie* evidence, and conclusive to all intent and purpose if not contradicted. Lord C. J. Mansfield, in *Trial of John Almon,* (20 Howell State Trials, 842.)

Jefferson Clark likewise testifies, that he believes the number of the New England Galaxy of the date of November 30, 1821, which contains the second alleged libel, was published by the defendant, being similar to the newspaper printed by him at that time. Nothing is shown from which you may infer, that this paper is not a genuine number of the Galaxy which was issued on that day.

Secondly, are these pieces intended to reflect on the Russian consul, and are they libels? As to the second piece, both the counsel for the defendant admit that it was intended to apply to that gentleman, and what is so admitted requires no further proof. The first piece of evidence in relation to the

application of the piece of September 1, 1820, is contained in the number of the "Euterpeiad," a paper which was published on the 26th of August preceding. In that is contained an article upon "Miss Eustaphieve," a daughter of the Russian consul, relative to her extraordinary talents as a musical performer, and in reference to which article it would seem, from a postscript, this piece was written. It appears from all the witnesses, that the Russian consul had at that time a daughter in her twelfth year only, who was distinguished as a prodigy of musical talent, particularly for her power of execution on the piano-forte. Mr. John S. Ellery testified, that on reading that piece at the time, he instantly knew that it referred to the Russian consul and his daughter, and that being his friend, and having taken an interest in his family from their first arrival in this country, about fourteen years ago, he immediately carried the paper to him, and that it appeared deeply to wound his feelings. Mr. Bryant P. Tilden testified, that he immediately knew that the piece alluded to the Russian consul; that there were no other father and daughter in the city at that time, to whom it could refer; and that it was a subject of great conversation in the insurance offices here, which you know, gentlemen, are places of great resort, where all news is eagerly detailed, and where an article is perhaps not the less likely to attract attention for possessing something of a domestic character. Mr. Tilden, speaking of the talents of the young lady, says, that the late Dr. George K. Jackson, a most eminent professor of music in this city, would sit by her for hours, hearing her performance in admiration of her powers of execution. Similar testimony was given by Mr. William Coffin. He believed that the piece could refer to no one but the Russian consul, from his avowed fondness for music, and from the distinguished talents of his daughter, which was a subject of much conversation at that time among musicians and amateurs.

It was attempted, in the defense, to show, that the publication referred to a Mr. Lewis, who, with his children, two boys and a little girl, were in this city a few years since. Some witnesses have testified, that this gentleman had the

reputation of treating his children with severity, and it was owing to this, that the boys had attained to considerable excellence on the piano-forte. If this were true, gentlemen, it would be nothing surprising, as we know, that it is almost impossible to secure the attention of children, and that they should attain to great accuracy in any literary or scientific pursuit without perpetual watchfulness, and the occasional application of severity. I have known some rare exceptions to this rule, but the celebrated Dr. Johnson acknowledged, that he was indebted for his accuracy in the languages to the severity of his masters. Mr. John Dodd, who was examined as a witness for the defendant, testified that the daughter of Mr. Lewis never appeared in public; that the performances of the boys were remarkable for children; but that they were not equal to Christian's, or what would be deemed rare or excellent in a professor. He further testified that Mr. Lewis, with his family, left Boston sometime in the year 1820, and that on reading the piece he did not think it could refer to him and his children. Messrs. Ellery, Tilden and Dodd all agree in the fact, that the Russian consul is a tender father and passionately fond of his daughter, as well as proud of her accomplishments. And hence the eloquent counsel for the defendant raise an argument, that this piece could not be intended to refer to him. But, gentlemen, if from the evidence, you believe that the piece was intended to refer to him and his daughter, then this fact will tend to show the disposition of its author, and you may fairly infer, that he meant to wound Mr. Eustaphieve in the most susceptible point. For if he is an indulgent father, it must wound him the more deeply, to be accused of the want of natural affection. But it belongs to you to weigh all the evidence, and if you are not satisfied, that the piece was meant to reflect on that gentleman, the defendant will be entitled to an acquittal.

Are the pieces complained of libels? The first is averred to relate to the conduct of the Russian consul as a parent towards his daughter. It says, in substance, that the musical superiority of this young lady was effected by the incessant

drilling of a cruel and heartless master;—that her astonishing rapidity of fingering produced no effect on the feelings, except pity for the haggard cheeks and feeble frame of the lifeless automaton; that the parent had subjected his daughter to daily drudgery by threats, promises and flattery, without alleviating her task by a ray of kindness or affection, and that all the future prospects of the child were sacrificed at the altar of ambition. He concludes with invoking the indignation and contempt of an enlightened community upon the tyrant. This paper is in legal contemplation a libel, because it exhibits the party intended as a heartless monster, devoid of natural affection, and sacrificing his daughter to gratify a senseless ambition; thus containing that sort of imputation, which is calculated to vilify and bring a man into hatred and contempt. Now if you believe, that the defendant meant in this way to hold up the Russian consul to the view of the public, with the malicious intent to bring upon him the hatred of the community, you will be warranted in pronouncing a verdict of guilty.

You are to judge of the motive, for there is no criminality without intention. Now where a party has published a paper of this character of another, he is answerable for its legal effect; "a criminal intent from doing a thing in itself criminal, without a lawful excuse, being an inference at law," unless he can negative the malicious motive. You will therefore next inquire, whether the defendant has succeeded in this part of his defense. And here you will recollect and weigh the argument of the eloquent counsel for the defendant on this point. They have read the whole piece from which the libellous matter was extracted, and they deny that it refers to any individual. They say that according to all the rules of fair criticism, it must be interpreted to relate to a school of musicians and performers, and not to the Russian consul; and that it is plain, that the object of the writer was to instruct, with a view to correct and improve the public taste.

Was the general object of the writer innocent and laudable? If perceiving that undue praise had been bestowed on

what he deemed an improper object; and that it was likely to introduce a bad taste into the divine art of music; or that a sentiment prevailed, which was calculated to injure the general education of young ladies, by taking off their attention from the useful branches of knowledge, and fixing them on the ornamental only, thus sacrificing mind to accomplishment; if you are satisfied, that the general design of the writer was to discuss merely these subjects of general interest, thus you may fairly infer that his object was innocent and laudable. But if in prosecuting this his lawful object, he has maliciously strayed from it, and indulged himself in defaming the Russian consul as a parent, then the general design of the piece will not excuse the wanton attack on the feelings and character of that gentleman.

As to the second piece complained of, I agree with the counsel for the defendant, that it is a rude, uncouth and indecorous piece, of which I should prefer to be the subject rather than the author. We look in vain to find in it any classical wit, to disguise the feelings of the author towards the individual whom he meant to satirize. The whole piece has been read to you and you are to weigh the argument which defendant's counsel have made, and in which they insist that it is merely harmless wit, devoid of any malevolent design. I think, in passing judgment on it, you may fairly consider, whether you would feel wounded at finding yourselves elevated into the columns of a newspaper, to be gazed at by the passengers, and designated in the style, in which it seemed good to the ingenious author of this piece, to display the life and opinions of Mr. Eustaphieve. You are not to resort to strained rules of criticism, or to seek for the meaning of vulgar epithets, as was done with great ingenuity and effect by one of defendant's counsel, in the almost to us unknown science of heraldry. But you are to exercise your own common sense, not imagining that, because you are in a court of justice, you are to see with other eyes, or hear with other ears, or to judge with other judgment, than if you were by your own fire-side.

In this piece, the author seems to delight in the figure of a

Bear, and to attach that appellation to Mr. Eustaphieve. He speaks of "the sign of the Bear and Fiddle"—he speaks of the Russian consul "as sucking a Bear," like Romulus and Remus. He speaks of "the dancing Bear"—"the polar Bear"—"the rugged Russian Bear," and "of a set-to between a big Bear and a Dandy." He also alludes to his employments, as being fond of music, of fishing, of writing in the newspapers,—and there are some expressions of double meaning, which, if taken in their vulgar signification, are highly offensive. Now, gentlemen, weigh this in the judgment of common sense and common charity. If, on a deliberate view of it, you believe it was designed as a piece of criticism on an unfortunate author, as mere and legitimate satire with a view to correct the public taste, and to prevent the writer from indulging his vein for scribbling, it was harmless. But if, on the contrary, you believe, that it was meant to represent the Russian consul as an object of contempt and ridicule, to wound his feelings, and to sport with him in a land of strangers,—then the laws of hospitality have been violated, as well as the laws of the land. For, "if any man deliberately and maliciously publishes anything in writing concerning another, which renders him ridiculous, or tends to hinder mankind from associating, or having intercourse with him," it is libel.

THE VERDICT AND SENTENCE.

The *Jury* returned a verdict of *guilty* on the second count, and *not guilty* on the first.

Mr. Gorham addressed the court on the nature and extent of the punishment such an offense ought to receive; he contended that it did not fall within the several classes of libels, which it had been found necessary to punish with severity, namely, that it was not against government, and of a seditious nature; nor against a magistrate, or one high in office, whereby the public as well as the individual might be injured; nor one by which the peace and happiness of the domestic circle was disturbed; but only satire, carried a little beyond prescribed rules. He also contended, that as the alleged libel

was drawn from an old publication, and as time went to the merits of a libel, it certainly ought to go in mitigation of punishment. Much reliance was placed on the decision of the king's bench, on the application of Sir Hudson Lowe for an information to be granted against Mr. O'Meara, the author of the account of Napoleon Bonaparte's exile at St. Helena; which was refused because he had allowed a fifth edition of the work to appear, and more than six months to elapse before he commenced his complaint.

JUDGE THACHER said that there was a great difference between an application to the king's bench for an information in such a case, and an indictment found by a grand jury. That court could not, very properly, exercise their extraordinary jurisdiction under such circumstances, but would leave the party to the ordinary redress.

The defendant was sentenced to pay a fine of one hundred dollars, and to give sureties for his good behavior for one year, himself in five hundred dollars, and two sureties each in two hundred and fifty dollars.

From this judgment he appealed to the supreme judicial court. At the trial of the appeal before Judge Wilde, he allowed the defendant to prove, that Mr. Eustaphieve assisted in getting up a ballet at the theatre. He confirmed the law generally as laid down in the municipal court. But the jury did not agree in finding a verdict.

THE SECOND TRIAL OF JOSEPH T. BUCKINGHAM, FOR LIBEL, BOSTON, MASSACHUSETTS, 1824.

THE NARRATIVE.

As the jury had found that the charge of being a cruel father made by the editor of the *New England Galaxy* did not refer to the Russian Consul and as the second libel was a silly and senseless attack which could hurt nobody but its author, Mr. Eustaphieve, after the trial, sent two of his friends to the editor to tell him that he would proceed no further against him, if he would print an apology which he had drawn up. Otherwise a new indictment would be asked of the grand jury on the third article which was a most grievous libel, for it not only held him up to contempt and ridicule as a man, but was calculated to destroy his standing as a public official and to deprive him of his office as Consul of the Russian Empire.

But editor Buckingham refused to print the apology and a second and good indictment was returned by the Grand Jury founded on the story in the third article describing the disturbance at the ball. (see *ante* page 505.)

The editor pleaded that the publication was not malicious, as he had simply printed the story as it was sent to his newspaper by a correspondent in whose word he had the utmost confidence. And he proposed to prove by witnesses just what did take place at the ball in question, not as a justification—for his lawyers had to admit that by the law of Massachusetts the truth of the words was no justification in a criminal prosecution for libel—but to rebut the presumption of malice.

The trial Judge ruled that the truth of the libel was admissible to rebut malice in the cases only where the publi-

cation was made in the public interest. Here the public had no interest in what was taking place at a voluntary assembly of persons for the amusement of dancing.

Mr. Buckingham was found guilty by the jury and was sentenced by the judge to imprisonment in jail for thirty days and to pay the cost of the prosecution.

THE TRIAL.[1]

In the Municipal Court, Boston, Massachusetts, March, 1824.

HON. PETER O. THACHER,[2] *Judge.*

March 8.

This was a new indictment on the publication which was contained in the third count of the indictment heretofore tried (see ante p. 505), but which third count failed then on account of a mistake of omission.

The defendant pleaded not guilty.

The indictment consisted of two counts, in both of which the whole article was recited, with inuendoes and averments in the usual form. The first count alleged that the defendant, in the publication complained of, intended maliciously to defame, vilify and scandalize Alexis Eustaphieve, and hold him up to the contempt and ridicule of the public. The second alleged, that the defendant maliciously libelled the said Alexis Eustaphieve, with intent to destroy his reputation, and thereby deprive him of the emoluments of his office, as consul of the emperor of all the Russias.

James T. Austin[3] for the Commonwealth.

Benjamin Gorham[4] and *Samuel L. Knapp*[5] for the defendant.

[1] Wheeler's Criminal Cases, see 1 Am. St. Tr. 108. Thacher's Criminal Cases, see 2 Am. St. Tr. 858.

[2] See 2 Am. St. Tr. 859.

[3] See 1 Am. St. Tr. 44.

[4] GORHAM, BENJAMIN (1775-1855). Born Charlestown, Mass. Grad. Harv. 1796 and admitted to Boston Bar. Representative in Congress 1821-1823, 1831-1833-1835. Died in Boston.

[5] KNAPP, SAMUEL LORENZO (1783-1838). Born and died Newburyport, Mass. Practiced law and was author of many works of biography and travels.

Mr. Austin. The indictment is founded on a certain piece published in the New-England Galaxy, which formed the basis of a third count in an indictment found by the grand jury at a former term of the court, but which was found to contain an informality, which excluded it from trial. It has passed again through the hands of the grand jury, and there is now no fatal deficiency of technical formality. It has no connection now, however, with the other counts in that indictment, and is to be tried without any reference to any of the publications that were the subject of the former trial. There are three points for the jury to consider. First, whether the defendant published the piece as set forth in the indictment. Secondly, whether Alexis Eustaphieve, the Russian consul, was the person to whom the piece was intended to apply. And thirdly, whether the piece is in itself libellous. On the first point, it is not necessary to exercise the patience of the court and jury, for it is admitted by his counsel that defendant was the editor and publisher of the New England Galaxy in which the piece was published on November 7, 1823.

As to the second and third questions it cannot be doubted that the Russian Consul was the person alluded to as was averred in the indictment and as to the third question, if you should find that the piece which I will read to you is a libel, you must pronounce Mr. Buckingham guilty.

Mr. Gorham. The Consul is not named in the article; he is not the representative of the Emperor of Russia.

Judge Thacher. The government may prove their averments, and as they have averred that Mr. Eustaphieve was the Russian consul residing in Boston, duly accredited by the government of the United States, and that he was present at an exhibition ball, given by Messrs. Parks and Labasse, at Concert Hall, it was undoubtedly competent and material for the government to prove those facts.

Mr. Austin. Then after reading the article I will make that proof. The libelous article, gentlemen, is as follows:

"RECORD OF FASHION. The pupils of Messrs. Parks and Labasse gave a splendid exhibition of dancing at Concert Hall on Tuesday evening. The elegance of attitude and the gracefulness and ease of their movements afforded a proof of the science, skill and taste of their instructors and elicited the approbation of a crowded and fashionable concourse of spectators.

"A communication respecting this exhibition and ball has been received, the chief object of which is to give the details of an unpleasant and disgraceful disturbance which occurred in the course of the evening. The history would not do much honor to the parties concerned and we decline its publication at present, though it is but just to the character of Mr. Parks to say that we have not heard that any blame was attached to his conduct on the occasion, but that on the contrary he kept as much aloof as possible from the scene of anger and confusion. 'The rugged Russian Bear' it is

said was a conspicuous actor in the farce, which had well-nigh turned out to be a tragi-comedy in consequence of his attempting to jump with his cocked hat and all down the throat of one of his opponents. We think with our correspondent that it is best at the present moment to give no opinion on the merits of the controversy but leave it to the decision and final adjudication of him who while acting as the representative of the greatest monarch of the world—the magnanimous Alexander the autocrat of all the Russias, the honorary member of the Massachusetts Peace Society, the grand pacificator of Europe—does not deem it a derogation from the dignity of his high vocation, to become a party in the quarrels of dancing masters and fiddlers."

I put in evidence the *exequatur* of Mr. Eustaphieve dated September 7, 1809, signed by President Madison. And I will now call my witness.

Johnson S. Ellery. Alexis Eustaphieve has been the accredited consul of the Russian Empire residing in Boston for fourteen years. Myself and Mr. Eustaphieve were at the ball at Concert Hall on Tuesday evening preceding 7th November. He behaved with the utmost propriety; there was no other person at the ball to whom the remarks could apply. There was a disturbance during the ball, Mr. Labasse being ignorant of the English language requested Mr. Eustaphieve to interpret for him on which account Mr. Eustaphieve interested himself at the time in his behalf and he was not otherwise concerned in the affair than as a friend and interpreter of Mr. Labasse. Defendant in a conversation with me on 13th January last, acknowledged that the consul was the person for whom the application was intended.

Cross-examined. I cannot recollect the precise words used by defendant but am positive that the personal application was admitted. I called on defendant at his office on the day aforesaid intending to act as a peacemaker and endeavor if possible to effect a reconciliation of all differences between the consul and defendant. Mr. Coolidge went with me. I told defendant the consul was desirous of stopping all farther proceedings and I thought he ought to meet these pacific overtures with a correspondent disposition and manifest his good feelings by publishing some kind of an apology to sooth the wounded feelings of the consul; that I had written an apology which I showed defendant and thought he ought to publish it. This is a copy of the paper:

"In justice to ourselves we cannot but express our sincere regret that any thing should have appeared in the Galaxy to wound the feelings, or reflect on the character of Mr. Eustaphieve, a gentleman for whom we have the highest respect, and whose conduct, both private and public, we believe to be irreproachable. Inad-

vertency, absence from home, and the abuse of our confidence by correspondents, with whose motives we were not acquainted, must be our apology. We wish to be understood as including within the above explanation the article dated November 7, 1823, charging the consul with undignified deportment at the ball at Concert-Hall, as, on subsequent information (not having been present ourselves) we *are assured* the statement is altogether unfounded."

Mr. Ellery. Defendant declined publishing this apology but said he would publish something similar in substance but in language of his own. He wrote a few lines which he expressed a willingness to publish; I thought them not sufficient; told him they would make the matter worse and be adding insult to injury. As nearly as I recollect of what defendant wrote, it was that there were contradictory accounts of the transactions at Concert Hall on the evening of the exhibition, some gentlemen declaring that there was nothing improper in the conduct of the consul and others of equal respectability and veracity maintaining the contrary, it was not for him (defendant) to decide or to reconcile the contradiction.

The Defendant. Did I not assign to you as a reason for refusing to publish the piece you presented, that if published it would amount to a declaration of my disbelief in the representations of men of veracity, or that in other words, it would be charging them directly with falsehood? Yes, that was the reason you gave for the refusal.

THE DEFENSE.

Mr. Knapp. We contend that the piece was not in its nature, libelous, and if it were so it was not a libel on the consul. The quotation "the rugged Russian bear" was no more a designation of him than it was of any other Russian; that it was no more libelous to make use of it in the manner in which defendant used it than the terms Yankee, John Bull or Nic Frog when applied to one of our own citizens, an Englishman or a Frenchman. The Russian Consul could not be identified with the description in the paper. The piece spoke of the representative of the autocrat for all the Russias. Mr. Eustaphieve was not such a representative. He was a consul, a mere commercial agent. If the description answered to that of any person it was the Russian minister, Baron Tieul, and it was he if any that was libeled. But there was no libel. The piece did not describe Mr. Eustaphieve, and the person whom it did describe, in part, was not present. The piece could not be considered a libel. It was an account of an occurrence which took place at a public ball, given at a well-known licensed tavern. An exhibition of dancing had been proposed; the attention of the public had been invited to it by advertisements in the newspapers; tickets were sold to admit the bearer; and the exhibition was as fair a subject of remark and criticism as the entertainments at the

theatre. An unpleasant and disgraceful disturbance or quarrel took place at this exhibition; and if it were libellous to give the particulars of the quarrel, and to comment thereon, there is no reason why it was not libellous to publish an account of a riot in the street. If this were a libel, hundreds of libels were published every week, and no editor of a newspaper could escape from a prosecution. This piece wanted the principal ingredient to constitute a libel: There was no malice in it. Mr. Ellery, the witness for the prosecution, had stated on the stand, that the defendant had disclaimed all malice and personal animosity, and had declared his willingness to publish any thing that he could in honor publish, to soothe the lacerated feelings of the consul. He did not, it is true, publish the apology presented to him by Mr. Ellery. He did right in refusing to publish it. Had he done so, he would have met, and justly met, the contempt of the public. I should have despised him, and so would every man of high-minded and honorable feeling. He acted as every prudent and honest man would act, and did not meanly endeavor to get out of a small difficulty, by getting into a worse one. The facts which he stated in the paper were communicated to him by men of respectability and veracity and he did not choose for the sake of conciliation, however, much he might desire it, to say that he disbelieved such men. He acted wisely and properly in refusing to decide which of the parties was guilty of falsehood. I expect to be able to prove that the Russian consul took an active part in the disturbance at the exhibition, and that if he interfered merely as a translator, he did it with so much earnestness and zeal as led the spectators generally to disbelieve that he felt a strong interest in the success of one of the parties. It was not necessary for the defendant to show that the occurrences took place, substantially, as he had stated in the paper in order to rebut the charge of malice, and for that purpose he should call sundry witnesses.

But first we desire to call a witness who heard the conversation with Mr. Ellery at his office, in order to show more particularly to the Court and jury why he refused to publish the apology.

Cornelius Coolidge. The conversation at defendant's office was substantially as stated by Mr. Ellery.

The Defendant. Was it not stated by me, to Mr. Ellery, that I was unacquainted with the Russian consul, had never spoken to him, that I indulged no personal animosity, and was perfectly ready to meet him on amicable terms? Yes.

The Defendant. Did not Mr. Ellery appear to be satisfied that there was no malice on my part, and that I was willing to make any arrangement for the settlement of the difficulty that could be made without exposing me to the charge of inconsistency and duplicity? I do not recollect distinctly, but my impression is that you discovered a wish to have all differences adjusted.

The Defendant. Mr. Ellery stated to me, in your presence, Mr. Coolidge, that the consul

had some cause to regret what had taken place; he was satisfied that I did not indulge any malicious or ungentlemanly feelings towards him, and that I had been deceived by correspondents; he was even sorry that the jury had convicted me on any part of the indictment which had just been tried; he was willing to use all his influence with the court to prevent the sentence from extending farther than to a fine merely nominal, if I would publish the apology. In reply, I said to Mr. Ellery that I thought it best to let the matter rest till the sentence of the court should be known; that if, in consequence of his interference with the judge and county attorney, the sentence should be merely nominal, I should think myself bound to say so, and to say every thing else, that could be said with justice in his favor, but that I thought this a bargain for payment in advance, for what it was by no means certain the consul could accomplish; for he could have no control over the sentence of the court. I appeal to you, Mr. Coolidge, if this be not the fact.

Mr. Coolidge. I can not recollect, *positively*, but I believe it to be substantially true.

Mr. Knapp. We will now call witnesses to testify as to what occurred at Concert Hall at the exhibition alluded to.

Mr. Austin objected.

Mr. Gorham. We do not wish to introduce the testimony as a justification. We agree that the law as it now stands does not allow the defendant to prove the truth of the charges as a justification. But I wish to introduce this testimony to repel the charge of malice and then leave it to the jury to decide whether it were a justification or not. This right has been recognized in a great number of decisions both in England and America. The law thus settled enables the jury to judge of the law as well as the fact. But how can the jury be judges of facts when all the facts are excluded, as they would be in this case if the defendant were not permitted to show that there was a disturbance and that the Russian Consul took part in it.

Judge Thacher. I do not consider that in deciding this, I shall interfere with the prerogative of the jury. It is the undoubted right of the court to decide on what is evidence, and it belongs to the jury to judge of the effect of evidence after it has been admitted. The defendant undertakes to justify the publication, on the ground that the subject-matter was of a public nature, which was rightfully communicated to the public, and that it called for such remarks as are contained in the piece. Or rather, he offers to prove that the publication was for a justifiable purpose and not malicious, nor with intent to defame, by showing the circumstances which occurred at the time. Had the attorney for the commonwealth instituted an inquiry, as to the deportment of the Russian consul at the exhibition alluded to, which under the averments in the indictment might have been done, I should have felt bound to let in all the testimony to this point, which either party could have

brought forward. But no evidence of this kind has been offered on the part of the government. Nor is it material to the issue to be tried, what the deportment of that gentleman was upon that occasion, it being a just and legal presumption, that he did behave at the time with propriety, and according to his rank and station.

The learned counsel for the defendant do not offer the evidence of the occurrences of the evening as a *justification* of the libel, because they admit that, by the law of this Commonwealth, "the truth of the libellous words is no justification in a criminal prosecution for a libel."—But they contend, that this evidence ought to be received, to rebut the presumption of malice. But if this evidence should be received in this case, I think it would go very far to evade the general rule, "that a defendant cannot justify himself for publishing a libel, merely by proving the truth of the publication:" for, under whatever circumstances it is received, the *use* which he would make of such evidence to the jury would be, to justify the publication.

Before a defendant can be admitted to this evidence, he must prove that the publication was for a justifiable purpose, and not malicious, nor with intent to defame any man. Clapp's Case, 4 Mass. 163. If a piece complained of appears to be a friendly admonition from a father to his son on his supposed misconduct; or the testimony of a witness given in a court of justice; or a character given of a servant; the purpose thus appearing to be justifiable, and not malicious, the party would be entitled to prove the truth of the matter in justification. Or it may be apparent, *that the public has an interest in the publication*, on account of the *individual* concerned, or of the *subject matter*. The individual may be a public officer, or a candidate for a public office, and the piece may relate to the public service. It may be a petition or remonstrance to the government, complaining of some stretch of authority, or of some illegal act, in some one of its branches, as in the famous petition of the Seven Bishops to James II. remonstrating against his proclamation, granting unlimited toleration, and suspending all laws relative to tests, papists and others. 12 State Trials, Howell's ed. Trial of the Seven Bishops, 183. It may relate to one who has been convicted in the due course of public justice of an infamous crime; in which case, society should be put on its guard against his future machinations. Or it may relate to one charged with an infamous crime, as murder, burglary, or swindling for instance, and who may have fled from justice. The public may in such case be properly called on, by advertisement or otherwise, to assist in arresting the fugitive, it being for the good of society that offenders should not escape punishment. In such, and in all similar cases, where a good intent appears on the face of the publication, evidence of the truth of the fact is admissible, to rebut the charge of malice.

The decision of the present motion must depend on the question, whether the public appears to have such an interest in this case as to warrant the inquiry.

The subject of the piece is "an unpleasant and disgraceful disturbance," as it is called, which occurred at an exhibition ball given at Concert-Hall in this city. If it was of a public nature, and the community had an interest in it, it was because of *the occasion*, or *of the place*. The occasion was a voluntary assemblage of persons for the amusement of dancing; the place was a licensed inn. Now I would ask, what interest had the public in the details of this scene? If any crime was committed there, it may be investigated like other crimes, committed in any other place. Suppose that an individual had intruded himself improperly into the company, or had forfeited his right to continue there by any improper conduct: The managers, after requesting him to retire, and after his refusal, might have turned him out by force, leaving it to him, if he considered himself injured, to bring his action for redress. If there was any disorder, which was not the subject of legal redress or inquiry; if any one, for example, acted in a manner unbecoming his character as a gentleman, or his rank and standing in society; let such individual suffer the natural consequence of his conduct in the silent loss of reputation. But I do not know that the public had such an interest in it as that it called for, or would justify, a libellous piece in a newspaper.

If we should now institute an inquiry into all the circumstances which occurred at this ball, one manifest inconvenience would arise. There were present between two and three hundred persons, ladies, gentlemen, and children. We cannot limit our inquiry to what was said and done by Mr. Eustaphieve. It will be equally proper and necessary to inquire, what was said and done by each individual who was present. Because the scene consists of all that was said and of all that was done by each at the time. Now, it is said in the piece, that there was a *disgraceful disturbance*, the history of which *would not do honor to the parties concerned*. Who is to be disgraced is wholly uncertain. But it is apparent, that the conduct of two hundred individuals, who are not on trial, who are not present, who have no notice of the question, and whose reputation may be affected by the inquiry, would, in this way, and without any legal necessity, be made a subject of solemn investigation in a court of justice. I am of opinion, that such inquiry would shock the good sense even of persons not learned in the law; much more would it offend the legal discernment of all, who are acquainted with its humane and wise principles.

"I take it to be clear law," says Bayley, J., in the trial of Sir Francis Burdett, (4 Barn. and Alderson, 324.) "that if a libel contain matters imputing to another a crime capable of being proved"—(and I think the rule equally extends to a libel imputing to another disgraceful conduct)—"you are not at liberty at the time of the trial to give evidence of the truth of those imputations. And this is founded on a wise, wholesome, and merciful rule of law; for if a party has committed such an offense, he ought to be brought to trial fairly, and without any prejudice previously raised in the minds of the public and the jury. The proper course,

therefore, is to institute direct proceedings against him, and not to try the truth of his guilt or innocence behind his back, in a collateral issue to which he is no party."

The indictment against Sir Francis Burdett was for a seditious libel, in which he was charged with attempting to excite discontent among the subjects and soldiers of the King, and to inspire in them hatred of the government. In the libel, he represented, that divers subjects of the king, men and women, had been inhumanly cut down by the dragoons at Manchester. The defendant offered, at the trial, to prove the truth of the allegation, or, in other words, the circumstances which occurred at the time. But the evidence was rejected; and the judges of the King's Bench, although they differed on other points of law, which had been decided at the trial, yet they unanimously approved the rejection of this evidence. And even after the conviction of that defendant, when brought up to receive judgment, affidavits offered in mitigation of the sentence, containing proof of the facts charged in the piece, were refused by the whole court; because they said, if affidavits are admitted on one side, they must be admitted also on the other, and so the court would incidentally try individuals for a crime who were not on trial.

This decision applies, in principle, to the present question. If we should go into this investigation, we should, in reality, be trying individuals for *disgraceful conduct*, when those individuals are not on trial. And as nothing is more clear to my mind, than that the character of an individual may not be attacked except in a court of justice, after due notice, and a fair opportunity to defend himself; and as the public has no interest in the inquiry, the evidence which is now offered on the part of the defendant is rejected.

Mr. Gorham, to the Jury. After the course which has been pursued by the prosecutor, the unprofitableness of contending when the testimony necessary for a defense is excluded is apparent. In prosecutions for libels it is necessary to charge the defendant with malice, in order to constitute a crime. How is he to meet this charge, unless he be permitted to go so far into the facts, as to show that the publication was an account of actual occurrences, and then let the jury judge whether there were malice in it? If his intention was merely to give, in the ordinary course of his profession as an editor, the substance of a quarrel which happened at a public tavern, his motive was not malicious; and there is no way of showing to the jury that it was not malicious, but by showing them that his publication was what it purported to be.

If the publication, on which the indictment was founded, were a libel, then it is almost impossible to look into a newspaper without finding a libel. It is libellous to state that a quarrel took place between two persons in the street, because it is derogatory to the character of gentlemen to be concerned in quarrels. Governor Brooks, who issued a proclamation, offering a reward for the apprehension of Michael Powers, suspected of the murder of Kennedy, and all the printers who published that proclamation were guilty of libels; and if Powers could have applied to a grand jury, before his apprehension, and entered a complaint, they would have been bound to find a bill of indictment, and the jury would have been bound to find them guilty, if they were not permitted to produce facts to show the motive for the proclamation; and they could not be permitted to do so, under the doctrine now set up by the court. It is impossible for any defendant to get clear of an indictment, without going into the facts of the case—not to justify the publication, but to show the intent, and to repel the charge of malice, which is a necessary ingredient in a libel. However in this case the publication itself indicated no malice on the part of the defendant. The paper and the conversation which had been related as having taken place at the defendant's office, are all we had to submit to the jury, and I wish you to recollect the testimony of Mr. Ellery and Mr. Coolridge which exonerates him completely from the charge of malice. It must appear evident that the prosecution would never have been renewed had the defendant published an apology which he could not conscientiously publish. If there were any malice or vindictiveness exhibted it was not by the defendant. We confidently expect a verdict of acquittal.

Mr. Austin. It is difficult for a public prosecutor to pursue a course that should at the same time satisfy all the parties concerned. Those who come with their complaints are very much disposed to think he does not do enough; and those whom as an officer of the government, it is his duty to prosecute very naturally think does too much. I shall therefore, without being influenced by either of these parties, en-

deavor to please a third—I shall endeavor to please myself; shall follow the course which the law, according to my understanding and best judgment, points out. The term malice as used in the indictment does not signify ill-will or a deliberate intention to do an injury; but that the libel was published knowingly—that the defendant knew of the publication and issued it of his own free will without compulsion. As to the apology which has been spoken of I would not say that it was just such a one as I would have advised the defendant to publish; and I submit to the jury whether the substitute which was offered according to the account given of it by the witnesses was such as an honorable man would accept.

THE CHARGE TO THE JURY.

JUDGE THACHER. You perceive, gentlemen, that this is a charge against the defendant, for publishing a malicious libel on the character and conduct of Alexis Eustaphieve, a consul of his Imperial Russian Majesty, duly accredited and residing in this city. The intent alleged is, that it was with design to injure and vilify him as well in his office, as in his general good name and estimation, and to have it believed, that he had, upon a certain occasion, conducted himself in a disgraceful manner.

The indictment contains a second count, in which the same piece is charged to have been published by the defendant, with the design, that it should be believed, that the Russian consul had conducted, upon a certain occasion, in a manner unworthy of his office and station of consul, by engaging in brawls and quarrels with persons of low character, and that it should be believed, that he was unworthy to hold and sustain that office and station. You are constituted in this case, the judges, both of the law and the fact.

If the piece complained of should not in your estimation be a libel; if the defendant did not publish it; or if it does not relate to the Russian consul, the defendant must be acquitted: and although you should be satisfied of these several facts, yet, as the essence of the crime consists in malice, if you

should find that the act of the defendant was free from this quality, he must be acquitted.

But it is not necessary that you should be satisfied that the piece was published with all the evil motives which are alleged in the indictment. If you should believe that the libel was designed to vilify the Russian consul as an individual only, and to bring him into contempt and hatred, you will find a verdict against the defendant on the first count only. But if you should believe that it was published with the malicious design to injure the Russian consul in his office also, and to cause it to be believed that he was unworthy to retain it, then it will be your duty to find a general verdict.

In this as in all other criminal prosecutions, the burden is on the government to prove the defendant's guilt. And if after a full review of the case the guilt of the defendant should remain doubtful, that doubt is to operate in favor of his innocence. Though accused of a crime, you are to weigh his conduct in the judgment of charity by that golden rule which we should wish and expect in like circumstances, should be applied to our own actions.

The fact of publication is admitted by the defendant; and in an interview with Mr. Ellery, he confessed that the piece was intended to apply to the Russian consul.

In considering whether the piece is a libel you will read it with attention, and apply to it the plain, unbiased judgment of your understanding. "The technical definition of the crime of libel is, that it is an excitement to a breach of the peace, by means of a written instrument, containing matter injurious to the fame and character of another." Is this piece injurious to the fame and character of the Russian consul? It begins with paying a compliment to the performances of the pupils, and to the skill and fidelity of their instructors. It proceeds to speak of a communication which the editor had received, giving the "details of an unpleasant and disgraceful disturbance, which occurred in the course of the evening, the history of which would not do honor to the parties concerned." So that the writer was aware, that he was upon a subject of delicacy affecting the characters of

other persons. Mr. Eustaphieve is then introduced under the description of "the rugged Russian bear," as being a conspicuous actor in the scene, "in consequence of his attempting to jump with his cocked hat and all, down the throat of one of his opponents." He then says, that it was best, at that time, not to express an opinion on the subject, but to leave it to him, "who while he is the representative of the great autocrat of all the Russias, &c., does not deem it a derogation from the dignity of his high vocation, to become a party in the quarrels of dancing-masters and fiddlers." Thus bringing the details of this scene into direct connection with the office which he held, and leaving it to be inferred, that though he was the representative of the Emperor Alexander, he was yet a party in the quarrels of dancing masters and fiddlers.

Now it is for you to judge, whether this piece has the tendency, which the indictment alleges, to degrade the Russian consul in public estimation as a man, and to affect his standing in his office. Consuls are persons appointed by the sovereign of a state, to reside in foreign ports, for the purpose of taking care of the commercial interests of his subjects transacting business there. They are usually persons of known probity and commercial intelligence, and are expected to understand not only the laws and rights of their own country, but the laws and customs of the place where they are appointed to reside. It is their duty to aid and protect their fellow subjects, and to advise and assist them in all cases wherein their rights or interests may be concerned. The affairs of trade, and the interests, rights and privileges of merchants and seamen in foreign countries, are ordinarily left to their conduct. It is expected of them, that they correspond with the ambassador from their respective sovereigns to the government of the country, within whose dominions they are stationed, and that they should send him information of any transactions, which may affect the political or commercial interests of their country. And in case there is no ambassador or other public minister from their soverign residing in the country, they are to transact their letters

directly home to the government which appoints them. Though a consul be not a public minister, under the protection of the law of nations, he yet enjoys some important privileges annexed to his office, which distinguish him from the private inhabitants of the place where he resides. So that you perceive, that from their situation, consuls are officers of honor and trust, and that it is in their power to do great good or harm, and even to affect the relations of friendly countries; and hence arises the importance, that consuls should be honorable men, and that they should support the dignity of their station by their grave and prudent deportment.

You are to consider, whether representing an individual, who holds an office of this kind, as guilty of disgraceful conduct, and engaging in the quarrels of dancing-masters and fiddlers, is not injurious to his fame and character. In common with all other citizens, Mr. Eustaphieve is entitled to be protected from unlawful attempts to render him an object of odium or contempt. And in rendering him an object of odium and contempt as a man, you will consider, whether his official character will not be sacrificed. It is not to be supposed, that his government will retain an officer in a station of confidence and responsibility, if he maintains not a character becoming that station. So that it is not foreign to your duty to inquire, whether the piece complained of has that tendency, and if it has, whether it will not also tend to provoke him and his friends to acts of revenge, and so to a breach of the peace, which is the definition of the offense.

And here, you will recollect the construction which the counsel for the defendant have put on this piece. They say, with truth, it contains no charge of official misconduct, nor any imputation on the moral character of the Russian consul. They also say it is harmless, sportive wit, which a wise man would disregard, and that no good comes from prosecutions of this description. And they call upon you to give to the words the most favorable sense; and it is undoubtedly your duty to do so, but you are not to violate your understanding by giving to the words any signification which is not consist-

ent with sound sense and the common meaning of the language.

You will next inquire if the intent of the defendant in publishing this piece was malicious, and if you find that it was done deliberately and wilfully, and that he persisted in it improperly, this will be evidence of malice. To this point, the testimony of Mr. Ellery is material. He says, that as a friend of the Russian consul, he called on the defendant, in January last, and informed him that the publication had greatly wounded the feelings of that gentleman, and that he was apprehensive it would injure him with his government. To this the defendant replied, that he bore no ill will to the Russian consul, that he had no knowledge of the circumstances, that he had written and inserted the piece on account of a communication which he received on the subject, that he had no acquaintance with Mr. Eustaphieve. Mr. Ellery then proposed to him to publish an apology, that the redress might be as public as the injury. He showed to the defendant a piece which he had written for this purpose. But the defendant declined publishing this, and then wrote a piece which he was willing to publish. It purported, that as many persons had asserted that the conduct of the Russian consul at the ball was improper, and others equally respectable insisted that it was correct, it was not for him, the defendant to decide the matter. This piece was not satisfactory to the Russian consul. Now the counsel for the defendant says, that his conduct in this particular was very proper, for if he had published a disavowal of the slander under such circumstances, he would have deservedly forfeited the confidence and patronage of many of his friends and patrons. I exceedingly regret that this negotiation was not successful, and I think it is much to be lamented, that when the defendant wrote this piece, his prudence did not suggest to him, that, possibly, he was about to inflict a severe wound in the breast of a man, who, he says, never injured him, and against whom he declares, that neither at that time, nor at any other, had he entertained any malice.

With the scene at Concert Hall, and with the conduct of

those who were engaged in it, you have no concern at this time. If a riot was committed there, let those who were engaged in it be prosecuted according to law. If the Russian consul committed any offense against the laws, or against good manners, he is as liable to legal animadversion as any citizen. His official character does not protect him. But let it not be understood, that the printer of a newspaper may publish a piece, calculated to bring this gentlemen into contempt with us or with his own government, and thus to destroy him, without trial and without a hearing. We do not hold our characters at the mercy of the printers of any newspaper. By our laws, a citizen may not be charged with any disgraceful or flagitious conduct, affecting his good name, his standing in society, or his employment, except before the judicial tribunals of the country, where he may be heard in his defense, and be tried according to the established rules of law. That the law of libel is ancient, and dates from a period beyond that of newspapers, is no reason, in my opinion, for relaxing its principals. The printer of a newspaper has power in proportion to his talents, to the interest which he excites, and to the diffusion of his publication. Who is the perfect man that may not, in the hands of the eloquent and ingenious satirist, be placed in an uncomfortable situation? What is so venerable or sacred, as not to have been subjected to the shafts of ridicule? And if, whenever we open a newspaper, we are to expect to find some extravagant representation of ourselves or of our neighbors, something caricatured either of praise or of blame, who that is conscious of the defects which are incident to the human character, would wish to live in such a society?

While all protection and encouragement are to be given to the directors of the press, in diffusing intelligence, in imparting instruction, and in the free, manly discussion of all truths affecting religion, morals, government, and whatever concerns human happiness; there is a limit beyond which, if they pass, it must be known, that they violate the law. Whether this is one of those cases, is left to your judgment to decide.

THE VERDICT AND SENTENCE

The jury after a conference of two hours returned into court and found the defendant guilty on the first count and not guilty on the second.

He was sentenced to suffer imprisonment in the common jail for thirty days and to pay costs of prosecution.

From this judgment he entered an appeal.

This appeal was tried before Wilde, J., before the supreme judicial court in the November term, 1824. The law as laid down was fully recognized and confirmed by him in his charge to the jury. The defendant was found guilty and again sentenced.

THE TRIAL OF ISAAC COTTERAL AND PETER CRANNEL, FOR ARSON, TROY, NEW YORK, 1820.

THE NARRATIVE.

Two men were confined in a county jail, one of them having been convicted of Horse Stealing and awaiting his sentence; the other about to be tried for assault and battery. They were not content with their place of residence, even though the jailer and his family lived there. So one night they carried some live coals from the stove and placed them in a crack between two of the boards in the floor, their intention being to burn a hole large enough to enable them to pry up a plank and escape through the hole. But before this was accomplished the fire was discovered and extinguished.

They were indicted for the crime of arson which at that day, if the place burned was an "inhabited dwelling," was punished with death. On the trial the Chief Justice ruled that the jail was an inhabited dwelling but he held that they had not wilfully set fire to it for the purpose of destroying it which was necessary to make their act arson; for they intended not to burn the building but only to make such a fire that they might escape from it. So they were not guilty of arson and must be acquitted.

THE TRIAL.[1]

In the Court of Oyer and Terminer, Troy, New York, March 1820.

HON. AMBROSE SPENCER,[2] *Chief Justice.*
HON. WILLIAM W. VAN NESS,[3] *Justice.*

[1] New York Criminal Recorder, See 1 Am. St. Tr. 61.
[2] See 1 Am. St. Tr. 789.
[3] See 1 Am. St. Tr. 780.

March 21.

The prisoners, Isaac Cotteral and Peter Crannel were charged with arson. They pleaded *not guilty.*

Thomas J. Oakley,[4] Attorney General and *William McManus,*[5] District Attorney for Rensselaer County for the People; *John Wells*[6] and *Ebeneezer Griffin,*[7] for the Prisoners.

The indictment which was under the statute "that every person who shall hereafter be convicted of burning any inhabited dwelling house shall suffer death," contained three counts: the first, for having, on the 3d of March, 1820, set fire to a certain inhabited dwelling house, of one Jacob Deforest, in Troy, and thereby feloniously, wilfully, and maliciously burning, consuming, and destroying the same. The second, for setting fire to the jail of Rensselaer, being the dwelling house of Deforest, inhabited by him and his family, and feloniously burning the same. The third count recited, that the prisoners, with others, were confined in jail, and alleged, that, on the 2d of March, they, feloniously, wilfully, and maliciously, set fire to the same jail, being the dwelling house of Deforest, the keeper, and inhabited by him, his wife, children, and servants, and the prisoners of that county, confined by civil and criminal commitments; and the same jail being contiguous to other buildings, &c. with intent to burn, consume, and destroy the said jail, &c.

THE EVIDENCE.

The prisoners, with ten others, were confined in the southeast room of the second story of the jail. Deforest, and his family, resided below, in the second story. In the room where the prisoners were confined, plank, within the brick walls, were

[4] OAKLEY, THOMAS JACKSON (1783-1857). Born Dutchess Co., N. Y. Grad. Yale 1801. Studied law and began practice at Poughkeepsie: Surrogate Dutchess Co. 1810. Member of Congress 1813-1815, 1827-1829, Atty Gen. N. Y. 1819. Member N. Y. Legislature, 1816-1820; 1828. Judge Supreme Court 1828-1846; Chief Justice 1846-1857.

[5] MCMANUS, WILLIAM; Surrogate Rensselaer Co. N. Y. 1815-1818; Member of 19th Congress 1825-1827; Dist. Atty. Rensselaer Co. 1818-1821.

[6] See 1 Am. St. Tr. 790; 12 Id. 351.

[7] See 1 Am. St. Tr. 790; 7 Id. 4.

spiked, perpendicularly, to timbers; and strips of iron were then put upon the plank, and another tier of plank were horizontally laid over the iron bars.

On the night of the 28th of February last, the prisoners set fire to the jail, by putting coals of fire into a crack, between two of the plank lining of the room. They carried coals from the stove, put them into the crack, and blew them into a flame. Their object was to make a hole large enough to introduce a pry, for the purpose of prying off the plank, and by that means, effecting their escape. In this they did not succeed, and the fire was extinguished. One Burr, a deranged man, being confined in the same room, was induced, by the prisoners, to acknowledge that he did the mischief, and was confined, by the keeper, in one of the cells.

On the night of the second of March at about eleven o'clock, the prisoners, in the same manner as before, and in the same place, kindled fire, for the purpose of burning a hole through the plank, large enough to pass through, and escape from prison. A considerable quantity of water had been saved, by the prisoners, out of their allowance; and, as the firing progressed, they brought water in a cup, and cast it on the fire, to prevent its blazing and spreading. They hung up a blanket before the place where they were engaged, to conceal the fire from the other prisoners, who were in bed, and a blanket was placed before the window. Threats were uttered against any of the prisoners who should say anything about the firing; and Cotteral said, "In about fifteen minutes we can be out, and those who will, may go, and those who will stay, may stay and fight fire!"

The prisoners had succeeded in burning a hole through both tier of plank, large enough for a man to pass through, and one of the iron bars was turned up, and a brick was removed. At this time, a quarter after three in the morning, John Prescott, one of the watchmen, saw a smoke coming out of the jail, near the chimney, and gave the alarm of fire. The water, used by the prisoners in deadening the fire, was expended, the fire blazed through the plank to the top of the room, and was beyond their control; and the jail would have been consumed, but for the exertions of the citizens. The fire, however, was extinguished, without any material injury.

Cotteral was confined in the jail, for horse stealing, of which he had either before or after the fire, been convicted; and Crannel was confined for an assault and battery.

The Attorney General argued, that the jail is an inhabited dwelling house, within the meaning of the act;[8] the jail was burned, though not entirely consumed;[9] this was a *wilful*

[8] Van Blarcom's Case, 2 Johns, 105.
[9] Rose Butler's Case, 2 Johns, 195; 4 City Hall Recorder, 77.

burning within the act. The definition of arson, at common law, is, "the malicious and voluntary burning the house of another." Malice is either express or implied; and where, as in this case, the act appears to have been the result of design, the prisoners are to be presumed to have acted with malice. They were confined for a felony, and it has been decided, that a breach of prison by one, so confined, amounts to a felony. The intent to break the jail was felonious, and the prisoners, harboring such intent, at the time the fire was communicated, are responsible for the consequences. If a man sets fire to his own house, and it burns that of another, this is arson. The same doctrine applies to homicide. Where a man, engaged in an unlawful act, kills another, this may be murder, or manslaughter, according to circumstances. The law implies malice, from the unlawful act. The principle is applicable to the case of arson; for there is no reason why it should not apply.

Mr. Wells and *Mr. Griffin* admitted that a jail was an inhabited dwelling house, and that in this, according to the authority of Rose Butler's case, there was a sufficient degree of burning to constitute arson, under the statute. But they argued, that according to the facts in this case, the prisoners were not guilty of *wilfully burning* the jail, according to the true construction of the same act. Its wording is peculiar: it must be a *wilful,* and not a malicious burning of an inhabited dwelling house. The word wilful, here means an intent to burn and consume the building. The act was passed to prevent the consummation of such intent, and not that to escape from prison. That the prisoners did not intend to consume the jail, appears from the case: they cast on water, to prevent the fire from blazing and spreading. Here, there was no attempt to commit arson; and though the burning was voluntary, it was not with the purpose and design of consuming.

Though an actual escape from prison, or the aiding others to escape, might be considered as felonious, yet, the bare attempt, by a prisoner, to escape from prison, was not felonious, either at common law, or under the statute. The doctrine of

implied malice, urged by the Attorney General, did not apply to the crime of arson defined in our statute.

THE CHIEF JUSTICE: The law relating to arson, is peculiar. It is true, that any ignition of an inhabited dwelling house, with an intent to consume, where the fire is either extinguished, or goes out of itself, is a sufficient burning to constitute this crime; and it is equally true, and so it has been decided by the court, in the case of Van Blarcum, that a jail is an inhabited dwelling house, within the meaning of the act. Every part, therefore, of this offense has been committed by the prisoners, unless it appears, from a fair construction of the act, that according to the facts in the case, they are not guilty of *wilfully burning* the jail. The case stands on very peculiar grounds. It manifestly appears that it was the intention of the prisoners, to burn for the purpose of effecting an escape. The attempt to escape, is not a felony, either at common law, or under the statute; and, according to our construction of the statute, we think that it would be straining the doctrine too far, to decide that the firing of a prison, by a prisoner, for the purpose of effecting his own escape, amounts to arson.

THE VERDICT AND SENTENCE.

The *Jury* found the prisoners *guilty* as to the first firing.

THE CHIEF JUSTICE sentenced Cotteral ten years to the state prison, for horse stealing; and ordered the other prisoner to be remanded to the jail of Rensselaer.

THE TRIAL OF JOHN WARD FOR THE MURDER OF MRS. EPHRAIM GRISWOLD, BURLINGTON, VERMONT, 1866.

THE NARRATIVE.

One morning in August, a neighbor stopping at the farmhouse of Ephraim Griswold, a few miles from Burlington, Vt., found it locked and its occupants absent. But a small boy calling for release from a second floor window attracted his attention, and led him to enter the kitchen where he discovered blood on the floor, Mrs. Griswold's room in disorder, the bed stripped, the bureau rummaged and all the silverplate of which there was a great deal in the house, taken away. Tracks of blood were followed from the kitchen door to the barn. There in a calf-pen, in her nightclothes, wrapped in quilts from the bed was the dead body of Mrs. Griswold, her throat cut, stabs and cuts on her head and hands, and her skull fractured by blows from a blunt instrument.

It was soon known that all the family, which consisted of Mr. and Mrs. Griswold, Charles H. Potter and his wife (who was an adopted daughter and heir-at-law of Mrs. Griswold) and two children of the latter and a boy named Call, with the exception of the boy and Mrs. Griswold, had left for Canada on the morning previous to the murder. Mrs. Griswold was 57 years old—a woman of strong, vigorous frame and great resolution—active, industrious and successful in the accumulation of property, but very domineering and quarrelsome.

On the morning after the murder and before the facts were widely known, a man appeared at the railroad station in Burlington as the early train was about to start and sought the privilege of riding in the car with the express messenger from New York on the score of his acquaintance with the "express boys" in that city. His appearance excited the

observation of the messenger, for his shoes and clothing were dirty and stained with blood and his manner was excited. He explained that he had just come from a fight with four men, having come off victor after a hard struggle. Later this man was discovered in New York City; he proved to be a person named Ward or Levigne[1] with a criminal record, with no trade or occupation and the companion of thieves and crooks. It was found that he had been in the vicinity of the

[1] Very little was ever known of him as he was a stranger to the scene of his crime. Even the prison chaplain who wrote the account of the trial and of his life after sentence had only the following to say of his previous career: "Who is he—what his true name—his parentage and past history? To these questions we can offer only partial reply, since to the very last, his reticence on these points was most remarkable. In the light of the sequel, we may here say, that he was unquestionably connected with a gang of the most adroit and desperate villains that ever existed on this continent. He was bound to his confederates, whose centre of operations was New York City, with branches in almost every part of the land, by the most awful oaths, to secrecy, vigilance and unfaltering fidelity. His 'pals,' or associates, were sworn to assist him with money, tools, arms or any other aid needful to elude arrest, escape imprisonment, or slay any that stood in the way to his ends. Although he was less than thirty years of age, he had for some time been an expert 'jobber' in the foul business of crime. It was a 'job' which brought him to Vermont, and its horrible work which led to his arrest and conviction for the crime of murder. He is a remarkably well built, lithe, muscular young man, about five feet ten inches in height, weighing about 140 pounds—erect, with dark hair, keen, round, dark hazel eyes, and dark eyelashes and eyebrows. His complexion is fair, and his features regular. His step and motions are quick and vigorous. He is twenty-six years of age, and though calling himself a machinist by trade, his hands are as soft and delicate as those of any city exquisite. He answers to the name of Ward or Lavigne; says he does not care which he is called; hints that he was born in St. Louis, Missouri; that his father was of German origin and his mother Irish; that he was bred a Catholic, but that he is 'no Catholic.' His speech bears a slight foreign accent, and his demeanor in public, or to one not in his confidence, is that of calm, resolute defiance. He has a degree of education which excites doubt of his word concerning his parentage. He reads well, and has evidently considerable general and historical knowledge of the world. His hand-writing is plain and graceful, and his spelling generally correct, and his sentences mostly grammatical. Of religious tenets he has more information than many suppose. He is quick of perception, close in observation,

murder some weeks before and had even visited the farm pretending to be engaged in the purchase of horses.

The marks of the death-grapples in the kitchen, the size and strength of the victim, the distance over which the body was carried, the condition in which the house was found and the amount of plunder that was taken, suggested the probability that at least two persons were concerned in the assassination. Therefore when it became known that the Potters were on bad terms with Mrs. Griswold, that she had hinted more than once that she was going to disinherit Mrs. Potter, and that Mr. Potter had frequently threatened her, this with the fact of the absence of the family at the time of the murder as if by some concerted arrangement, led to the indictment of Charles H. Potter with John Ward for the crime.

The trial resulted in the conviction of Ward who was subsequently hanged and the acquittal of Potter. But in a written confession, given to the Prison Chaplain, the day before his execution, Ward declared that he and a man named Moore had been hired by Potter to murder Mrs. Griswold.

THE TRIAL.[2]

In the Chittenden County Court, Burlington, Vermont, April 1866.

HON. JOHN PIERPONT,[3] *Chief Justice.*
HON. WILLIAM V. REYNOLDS,
HON. SAFFORD COLBY,
} *Judges.*

easy in manners, lively or forbidding in conversation, with marked relation to his feelings or confidence. But he is a *mystery*—a young man really *unknown* and inaccessible to any pleas for disclosing the secret which he persists shall be buried with him respecting his true name and parentage. Of the bloody deed of which he is convicted, he solemnly protests that he is wholly innocent. His faith in ultimate escape by the friendly aid of boon accomplices, appears to be abounded, and his confidence in them unlimited. Such is the man that leaves the jail at Burlington, to enter the Prison at Windsor, from which he is never to depart save by death."

[2] *Bibliography.* John Ward, or The Victimized Assassin, a narrative of facts connected with the crime, arrest, trial, imprisonment,

April 9.

John Ward alias Jerome Lavigne and *Charles H. Potter* had been previously indicted for the murder at Williston, Vt. on the morning of August 28, 1865 of Mrs. Ephraim Griswold. They pleaded not *guilty*. The trial began today.

L. B. Englesby,[4] States Attorney and *E. R. Hard*[5] for the State; *Daniel Roberts,*[6] *Jeremiah French*[7] and *Henry Ballard*[8] for the Prisoners.

The following jury were empannelled: M. N. Hosford, Francis E. Gale, Joseph Bean, Dean Hosford, Wm. Sanderson, Christian Van Vleit, Simeon M. Mead, Heman Sprague, Geo. Allen, F. C. Wilcox, Truman Fay, David B. Thompson.

Mr. Englesby opened the case for the prosecution. He exhibited

and execution of the Williston murderer, who was hung in the State Prison at Windsor, Friday, March 20, 1868: Together with his confession, intercepted correspondence, and the chaplain's diary of visits, etc. By the chaplain. Vermont Journal Print 1869. This book written by the Chaplain of the State Prison at Windsor, Vt., contains a report of the trial, taken from the Burlington Times, the subsequent legal proceedings, his attempts to escape from prison, his intercepted correspondence, his life in the State Prison where under the Vermont law he had to suffer solitary confinement before being executed, his confession and execution. The frontispiece is a woodcut of the criminal and his autograph "Jerome Lavigne."

[3] Pierpont, John (1805-1882). Born Litchfield, Conn. Member Vermont House of Representatives, 1841. State Senator 1855-1857. Judge Supreme Court 1857. Chief Justice 1865-1882.

[4] Englesby, Everett Brush (1827-1881). Born Burlington, Vt. Graduated Uni. of Vt. 1845. Studied law Harv. Law School one year and with Phelps and Smalley, Burlington. Admitted to Chittenden Co. bar 1848. State Senator 1865-66, and president *pro tempore*. State's attorney Chittenden Co. 1867-69. City auditor, assessor and city attorney, Burlington. Trustee Univ. of Vt. and for ten years member executive committee. Mason of high degree. See Carleton, Vt. Family hist.

[5] Hard, Eleazer Ray (1824-1899). Born Essex, Vt. Admitted to bar Chittenden Co. 1845; began practice in Jericho. Moved to Burlington 1852. Attorney for many large interests and corporations. State's attorney Chittenden Co. 1857-60, 1869-70. Member city council, Burlingon, 1862. State Senator 1867-68. City attorney 1868-70. For fifty-five years a member of Chittenden Co. bar. Died at Burlington. See Vt. Bar Assn. proceedings, 1901. Vt. Hist. Magazine.

[6] Roberts, Daniel (1811-1899). Born Wallingford, Vt. Grad-

to the jury a large chart of the Griswold place. He related to the jury the circumstances of the murder, and that the prosecution intended to prove: *First*, That there had been a bad feeling between Potter and Mrs. Griswold. *Second*, That Lavigne and Potter had been seen together, and in conversation previous to the murder. *Third*, That the morning after the murder Lavigne took the Rutland cars, and that in conversation with an expressman in the express car he showed blood on his pantaloons and drawers, and related a story of a fight with some parties in which he said he had used his revolver and billy. *Fourth*, That Lavigne returned to this vicinity disguised, a few weeks afterwards, and took the cars at Charlotte, but was arrested, where was found on him a revolver and billy, a vial of chloroform and an eye patch. *Fifth*, That he attempted to use his pistol on the arresting officer. *Sixth*, That he mentioned in conversation circumstances which could only be known to one concerned in the murder.

THE WITNESSES FOR THE STATE.

Morris Sullivan. Am a neighbor of Mrs. Griswold; the night before the murder saw her and the boy Call about 9 in the pasture putting up the bars; went to the house next morning about 8; the boy called from up stairs to let him out; I did so; saw blood on the doorstep; asked him where the old woman was, he said he supposed in bed; I hallowed but got no answer; sent

uated Middlebury Coll. 1829. Admitted to bar Rutland Co. 1832. Practiced law Jacksonville, Ill., 1833-35. Wallingford 1835-36. Manchester 1836-56. Burlington 1856-1899. Bank commissioner 1853-54. Special agent of U. S. Treasury Dept. 1865-66. Author "Digest of Decisions Supreme court Vt. 1789-1876"; "Courts of United States for District of Vt." 1878; "Vermont Reports" (1876-88). See Rann. Hist. Chittenden Co.; Vt. Bar Assn. v. 5; Ullery, Men of Vt.

[7] FRENCH, JEREMIAH (1835-68). Born Williston, Vt. Studied at Univ. of Vt. Graduate Harv. Law School. Began practice in Burlington with Levi Underwood. Soon had a large and successful practice, notwithstanding his constant struggle with a disease to which he succumbed when only 33 years old. See Harvard Uni. Quin. Cat. 1636-1905. Rann. Hist. Chittenden Co.

[8] BALLARD, HENRY (1839-1906). Born Tinmouth, Vt. Graduated Univ. Vt. 1861; Albany Law School 1863. Served one year in Civil war. Began practice in Burlington 1863 and remained there all his life. State Senator Chittenden Co. 1878-79. Delegate to Republican National Convention, Chicago 1884 and chairman of Committee on Credentials. City attorney, Burlington. Member Legislature 1888-89. Reading Clerk Republican National convention, 1888. Member of G. A. R. and Judge Advocate for that order in Vt. See Carleton, Vt. Family Hist. v. 2; Who's Who in New England; Ullery Men of Vt. Rann. Hist. Chittenden Co. Vt.

the boy to call the neighbors and we searched the house but could not find her, searched outside and found her body in the calf stable, partly stripped with some old quilts wrapped around her; there was blood in the kitchen and the tracks of a man without boots all over the floor; found a piece of a knife there; Potter's family and Mrs. Griswold were not on friendly terms; on the Wednesday or Thursday previously saw a man with Potter, a stranger; they were riding in a box wagon; have seen a man in jail supposed to be the man but can't say whether or not he is.

Cross-examined. Can't say whether I saw Potter coming back that day or not. Mrs. Griswold was a quick-tempered woman and when mad would say almost anything; used to scold the servants. Have known Potter 15 or more years; the Potters came there last Spring. Never knew Potter to abuse the old lady; heard Mr. Potter once say they got quarrelling and he threw a kettle of water on her. Never heard Mrs. Potter abuse the old lady; Mrs. Potter was brought up by Mrs. Griswold who thought a good deal of her.

Edward Call. Am 12 or 13. Lived last August at Mrs. Griswold's; slept over the kitchen. Recollect a man coming to buy a horse a week or so before the murder; a white complexioned man, a nice looking man. Mrs. Griswold said the man came to buy horses; caught Mr. Griswold's horse for him to look at. Man went with Mr. Potter to the barn; took dinner there that day, was in and out of the house. He went away between 4 and 5 o'clock in a wagon with Mr. Potter. Mr. Potter was going to Essex after a stove, he came back about 6 o'clock and brought stove with him; man was all around the dooryard that day. Mrs. Griswold and Mr. Potter did not quarrel that I know of, they had some difficulty but couldn't say when or what about.

Cross-examined. Mrs. Griswold was apt to have difficulty with people, sometimes attacked them. Never saw Mr. Potter abuse the old lady or Mrs. Potter. The man and Mr. Potter came together. After dinner they harnessed up and went down after oats. Man had talked about horses—about Mr. Potter's and Mr. Griswold's horse; inquired how he should get to Essex. Mr. Potter said perhaps he could get Mr. Sullivan to take him, Mr. Sullivan was not going and Mr. Potter said he was going after a stove after he got the grain in. Mr. Potter kept and sold a good many horses. Other people were there at different times to look at horses. Was with man considerable that day; noticed he had a finger gone on right hand. This does not look much like the man, think he is not the man, never saw this man around Potter's.

Wm. K. Taft. Was present at Mrs. Griswold's the morning after the murder. The tracks in the house seemed to have been made by a person in their sock feet; did not think the tracks were made by more than one person; seemed as if the person making them came from the south. The window opening from the dining room upon the piazza bore marks of having been pried open, the doors were

evidently pried open by the same instrument. The door from the parlor into Mrs. Griswold's bedroom was also broken open, pried open as the other door. Found in this bedroom a bureau with the upper drawer broken open. Examined the window of the sitting-room, found marks of blood on the sill. Mrs. Griswold was reputed to be a woman of property.

Mary Sullivan. Lived at Mrs. Griswold's for some weeks before the murder. Was there when a man came to buy horses previous to her death. He took dinner there that day; he had rather a light complexion, black whiskers and hair. Heard them say he was buying a horse that Mr. Potter had bought lately. He went away about 2 o'clock, heard Mr. Potter say he was going to carry him to the junction; Mr. Potter returned home before night, he brought a stove with him; think have seen that man since, saw him before the Grand Jury last Fall. The prisoner Ward is the person I saw at Mrs. Griswold's and in the Grand Jury room. The family did not live pleasantly together all the time, they had some words once in a while, heard them have some words once about a lock; Mr. Potter was putting a lock on his bedroom door, Mrs. Griswold thought he did not do it well and wanted him to get somebody to do it who understood it; Mrs. Griswold seemed to make the most words about it. Mr. Potter was not present at any of the altercations between the old lady and Mrs. Potter. Never heard any altercation between the old lady and Mr. Potter, except the one about the lock.

Cross-examined. Mrs. Griswold had had trouble with the boy Call; never knew her to have trouble with any of the workmen except the boy; when Mrs. Griswold got vexed she did not seem to have any control over her temper and would say anything that came into her mind. When I was there Mrs. Potter had the management of household affairs.

Dr. C. A. L. Sprague. Went to Mrs. Griswold's the morning after the murder; found the body of Mrs. Griswold in a calf-pen wrapped in a blanket; found cuts on her throat and face, three contusions on the left side of her head, the scalp was broken in three places and there were also bruises on the left temple and cheek, there were also some bruises about the chest, several small cuts in the throat. The contusions on the head seeemed to have been made by some blunt instrument which broke the scalp and fractured the skull.

Curtis E. Baldwin. Live south of Mr. Griswold's; had been in the habit of taking care of their horses and cattle; Mr. Potter told me on Saturday that he was going to Canada the next day; heard Mr. Potter say a few weeks before her death that the old lady had got into a "stew" and wanted to drive him off. Said that he'd like to see her get help enough to drive him away. Never saw any quarrels between Mrs. Griswold and the Potters.

Cross-examined. Potter did not appear very angry when he talked about the old lady; never heard Potter threaten Mrs. Gris-

wold. Mrs. Griswold would sometimes quarrel with people; she was easily excited and was apt to get out of humor.

George Williams. Heard Mr. Potter say that God had got a devil but not so great a one as he had. Potter then remarked that he would give $200 to put that old devil out of the way and if that was not enough he would give $500; this conversation occurred in the middle of July last.

Cross-examined. This conversation occurred at Mr. Potter's table when I was at work there haying. There was present at the table Mr. Griswold, Mr. Potter, Ham Potter, the Frenchman, Edward Call and myself. The old lady had been "sputtering" about some baked mutton on the table which she said was not good; she then got up and left the table, then Potter made the remark about "God had got a devil but not half so big a one as he had." He then said "I will give $200 to get that old devil out of the way, yes, by G—d, I'll give $500"; didn't think he meant his wife, neither did he mention Mrs. Griswold's name, he did not speak very loud. Mr. Griswold could not hear for he was deaf; did not think he heard the remark.

Harry Charles. Reside on the road between Williston village and depot. When the morning mail-train from the north, on Wednesday, August 23d, 1865, arrived at Williston depot, a gentleman stepped off and asked if there was any conveyance to Williston. I told him I would take him along and did so. He asked me if I knew a man named Charles Potter; asked where he lived and I told him. I carried him as far as Dr. Alger's; he then paid me his fare and I directed him where to find Mr. Potter. He was a nice, tidy looking young man, had a brownish mixed coat on and a low crowned black hat; his hair was black and he had some nice black whiskers and a black moustache. Have seen this man since; second time I saw him was in Burlington jail, I next saw him in the Grand Jury room last Fall. The prisoner Ward is the man.

The State's Attorney offered evidence that Mrs. Potter was heir-at-law of Ephriam and Sally Griswold. *Torrey E. Wales* Judge of Probate testified that the inventory of Mrs. Griswold's property amounted to $6210.

Chauncey W. Brownell. Had an interview with Mr. Potter a day or two before the death of Mrs. Griswold. He inquired about Mrs. Griswold having come to my house. He wanted to know what she was going to do and what she said about him. Told him she did not say very much, that she found some fault about his being abusive to her. He asked if Mr. Griswold found any fault. I said he did not; he said he could get along with Mr. Griswold and with the old lady as well as any body but the devil could not get along with her.

Cross-examined. Had known Mrs. Griswold a good while, she was a woman who generally attended to her own business; should think she was not so easy to get along with as the majority.

Ephriam Griswold. Was the husband of Mrs. Griswold. Mr. and Mrs. Potter came to live

with us in April a year ago, lived there during the summer. Had thought of going to Canada but a few days before I went. Potter spoke first of going on Friday towards night; don't know where Potter was on Friday and Saturday previous to the murder; he went away on the fore part of each day, Friday and Saturday, and came back towards night; did not generally know where he was going, sometimes he would tell and sometimes not. I started for Canada Sunday morning; Clark Potter went with me. Charles Potter and wife were all ready to start when I did. Clark and I started first and kept ahead till we got to Essex; we did not stop at Essex; have heard that Charles Potter stopped at Essex.

Cross-examined. Wife was 57 or 58 years old. Adelia was about three weeks old when we took her to bring her up, she always lived with us, did so when she was married. Charles and his wife lived with us soon after they were married for nearly a year and since last April they have lived near us, the families have been intimate. Mrs. Griswold always thought everything of Delia and the children; there was some hard feeling in the summer. Old lady generally spoke to Charles if she wanted any help. Delia always did everything to please her till they had some fuss last summer. My wife, when in anger would say what she was a mind to and then would be sorry for it. She always had the direction of her own business and was a hard-working woman out of doors and in. This fuss last summer was because Mrs. G. wanted to go on and take charge just as she used to but Delia didn't want she should. Never heard Charles threaten my wife. Had heard of the murder; a man named Brown saw it in the papers and told me; we all started for home that night and got home Wednesday about four. I found two pieces of a silver-plated tea set, a water pot and another piece had been taken, also a set of nice knives and silver or silver-plated forks, also 12 silver teaspoons, very heavy ones, and six or seven silver table spoons, all were taken from a cupboard in the buttery, cupboard had been wrenched open from the top, the lock was broken. Every bureau in the house had been ransacked; remember a gentleman came on Wednesday or Thursday before the murder; he said he wanted to buy a horse of Potter's—his black mare, I told him "you can't have that horse for love or money," asked him how he knew anything about that horse, he said he had seen Potter drive it two or three times; told him he need not wait for he could not have that horse. As we came back to the house Charles drove up, I told him the man had come to buy his horse, he appeared as though he did not know the man. Man took dinner there that day, I sat at the table, took no notice of him, Charles told me he was going to take him to the depot, they left at nearly four o'clock, the man was a pretty smooth looking young man, pretty good looking; saw Jerome Lavigne before the Grand Jury, could not see any of the man's looks in him.

[Lavigne stands up.] This don't look like the man I saw at the Grand Jury Room either; should say this was not the man I saw at my house.

Hiram B. Fish. Recollect when Mrs. Griswold was murdered, worked for Mr. Tyler at his hotel in Essex Junction, a man came there Saturday night before, he was there through the day on Sunday, last saw him about nine o'clock that evening, he sat in the sitting room, reading. I went to his room next morning to call him to breakfast; he was not there and the bed had not been occupied, or else had been made up, it was not customary to make the beds so early, have since seen a man in jail I think to be the man, suppose this is the man in the prisoner's box. [Lavigne stands up.] To the best of my recollection this is the man.

Cross-examined. Don't recollect about his pants and vest; he wore a low crowned hat, a soft hat of a grayish color; he wore sidewhiskers and a very light moustache; think his chin was shaven. Had no particular conversation with him. The man left without paying his bill.

Elliott H. Bowman. Resided at Essex junction last summer. Saw Potter there the Sunday morning before Mrs. Griswold's death. Saw the carriage stop at Mr. Tyler's hotel and Mr. Potter get in. Saw another man standing with his arms on the fence by the side of the carriage. Saw Mr. Potter give him a cigar. He then stepped round and got into the carriage; there was a woman and a child in the carriage. The carriage started north and the gentleman went with it. The man I saw leaning on the fence I have since seen in the jail, he is now in the prisoner's box.

John Redmond. Wednesday previous to the murder, I met a man inquiring for Mr. Potter on the road; he inquired for Mr. Potter's residence, directed him to Potter's; the man wore a black coat, a roundabout hat and black whiskers; couldn't say whether he had a black moustache; think the prisoner, Ward, is the man.

Park P. Wilkins. Saw Potter the Friday before the murder at my house at Winooski; asked me to get in and ride with him. Next saw him the day following. Saw a couple of men ahead of me who were driving smart, they did not seem to desire to let me go by, but finally I passed them. Looked to see who the parties were. Saw Mr. Potter driving down the street with the same team, this was about noon. The man who was on the near side was a dark complexioned man with full whiskers and a round top hat with wide brim which looked as if a man had stuck his fist into one side of it; saw a man in jail in September last who looked like that man. The prisoner Ward is the same man.

Warren Atkins. Kept the hotel at Winooski last August; knew Potter by sight; recollect the time of Mrs. Griswold's murder. Mr. Potter came to my house the Thursday or Friday before the murder, he inquired if a dark complexioned man had called there, I told him there had not. The Saturday after, such a man came, he inquired after Mr. P., this man was a tall-

ish, slim man, dark complexion, and dark side whiskers, his hair was dark and he had on a dark colored hat and clothes, think Mr. Potter came there that forenoon, this man waited till he came, the man said he had been waiting some time for him; they started off together, their wagon broke, and they went towards the blacksmith's shop, the man came back after Potter went to the shop and went into the bar-room, he staid a few minutes, I have seen a man that resembled him very much last fall in the Grand Jury Room, saw him the time he was arrested, when Mr. Flanagan brought him into my house, thought he was the same man that came to my house and inquired for Mr. Potter, he had some whiskers at the time, looked as if he had a growth of whiskers, and that they had recently been shaved off.

Cross-examined. Mr. Potter did not give this man's name when he inquired for him; saw Potter and this man together for about five minutes; swear positively that this was the man that was at my house.

Louis Loncke. Reside at Winooski; am a blacksmith. Saw Potter the Saturday before the murder at my shop, he came to get his horse shod. There was a man with him at the time; did not see enough of the man to recognize him.

Joseph W. Pratt. Reside near the Williston Poor Farm; saw Mr. Potter about four Saturday afternoon, before the murder, near my house; he was driving east and had a man with him; the man had a dark colored coat and had whiskers and a moustache; he also had on what some call a "rowdy" hat.

William H. French. Was coroner at the time of the inquest. Potter stated in his testimony at the inquest: "I did not have any conversation with anyone at Painesville; stopped there and got a cigar but did not see anyone I knew. There was several round the hotel when I was there at Painesville, sitting in the bar-room. I did not see anyone after I left the hotel on the road from there to Colchester; did not have any conversation with anyone I know of; did not speak to anyone at the hotel, except the man from whom I got the cigar, and a man who was holding a horse at the hotel steps, who was grumbling about it, and I told him to hold the horse as long as he got pay for it; I did not talk with any man at Painesville, except as above stated, did not walk along by the team talking with anyone;" Potter also testified, "There was a person came to look at the horse about two weeks since. The gentleman said he was from New York; he looked at Mr. Griswold's horse more than at mine; he came there at noon; took dinner there. He did not give his name and I did not ask it; should think him from 35 to 38 years of age; I had been away and found him there when I got home. I carried him to Essex Junction in the afternoon, to take the train, have no recollection of the day when the man came to buy a horse." Mr. Potter further testified, "The day the king-bolt was repaired was the last day I went to the Falls, it must have been the first day I went to see, and did see, Wil-

kins; I went to Burlington before I went to the Falls; no one rode with me from Burlington to Winooski; there was no team that drove with me from Burlington to Winooski that day. * * * We did not intend to start for Canada until late on Saturday night; a message was received from some member of Rev. Mr. Scott's family that he was dead, and requesting Clark Potter to be there."

George W. Kelly. Am a messenger of the National Express Company and run from here to New York. I first heard of the Williston murder when I returned to Burlington the next Wednesday night; heard that it happened the Sunday night before. Monday morning one of the drivers told me there was a man who had been inquiring for the messenger; the driver soon said that the man was outside the car waiting to see me. Stepped out of the express car and this man stood by the side of it; he wanted to know whether he could ride down with me and said he was going to New York. I told him, no, for it was against the rules to let anybody ride with me. Said he was acquainted with some of the boys in New York and it would be pleasant for him to ride down with me; said he did not want to sponge his ride as he intended to get a ticket. Told him that as he was a friend of some of the boys in New York I would let him ride, but would rather he would wait until we got down the road a piece. When we got to Vergennes he came and got into my car. After leaving New Haven I got into conversation with him; he told me he had had a fight the night before somewhere back of Burlington; said he had been up here for three or four days, said he had a little business up here. When he had got ready to start from Jack Merrill's with a horse and carriage which he had hired at a livery stable in Burlington he saw four men watching him and he started off then thinking he would get out of sight of them and drove along down until he thought he had got away from them and turned up the side of the road and stopped; as soon as he stopped he said he saw the men coming again; they came up to him and asked him what business he had there. Said he didn't know it was any of their business; they replied "they would make it their business" and pitched on to him. He fought them off until he got away from them; said he struck some of them and fired his revolver at them and didn't know whether he had hurt any one or not. He showed me his revolver, a common six-shooter; don't think I saw enough of it to identify it. This revolver looks like the pistol the man showed me. Said he fired off all the shots there were in it; didn't know whether he killed him or not; thought from his appearance he had walked from where stated he had the fight; his shoes and pants were quite dusty; showed me marks of blood on his clothing; said he got quite bloody in the fight, said his coat was so bloody and torn that he could not wear it, put it into his carpet bag; he had a leather bag with him which hung up in the car, and one which was checked, they looked rather slim as if they

did not have much in them, showed me where there had been blood on his pants from his knees to his feet. He had tried to wash it off. The man was rather slim, taller than myself, had very dark hair and whiskers; had on a cloth hat with a stiff crown and brim. Saw him next day in New York in west Broadway; I was on the wagon at the time and just said, "How do you do?" Next saw him in the jail here last October, recognized him as the same man that rode with me in the car, his appearance was changed, his dress was different and his whiskers gone; had a little conversation with him in the jail; I said "Good morning" to him, he replied, "You've got the start of me—I never saw you before." I told him, "I guess you are mistaken —you must have seen me before;" "You might have seen me, but I don't think you ever did;" he asked me where I had seen him, told him in New York, up by the Girard House; I told him there was no use of his saying that he had no recollection of meeting me, for he knew me well enough; he then asked me if I had seen Ed. Pease—that was the man whom he told me he knew in New York when he asked to ride in my car—Pease was one of our express drivers in New York; he then said he didn't want me to say that I had ever seen him before; said it was life or death with him.

Cross-examined. He had no whiskers when I saw him in jail, nothing but a small moustache; should think his whiskers had been shaved off by the looks of his face; did not have the same hat on as when I saw him before; recognized him at once.

Noble B. Flanagan. Had been employed by the authorities to ferret out the author of the Williston murder; made the arrest of Ward, *alias* Lavigne. First saw the prisoner in New York about a fortnight after the murder; I passed him on the sidewalk, observed him as closely as possible. Next saw him on the cars at Charlotte the 19th of September the second day of the County Fair. The conductor came and directed my attention to this man; requested the conductor to pass along and pay no attention to me. I got up, went to the door and opened it, found prisoner standing on the second step of the platform with his hand on both sides of the rail, with his head round the corner of car to keep it out of sight. Saw that he had lost his whiskers; he was dressed differently from when I saw him in New York. I passed right through into the car and closed the door and sat down by the window on a seat at the end of the car and watched carefully until I caught sight of the prisoner's face; he was the man I was in pursuit of. I went back to the other car and requested Mr. Edwards to come into the car and take a seat there and keep an eye on the prisoner; when I got to the depot of the Rutland & Burlington Railroad here, I learned that the prisoner had left the cars; when the cars started to go he came out from behind a freight car which stood on the side track, and jumped aboard, he took position on the platform again, I went back where I could keep an eye on him; when the

cars stopped at the Central Depot he got off and ran through a crowd which was there waiting to take the cars, behind the cars which were going to Essex Junction; watched him until he got out of sight behind the Central train, then got on the forward car of the train; when the cars started a person came from behind a pile of lumber and got on the same platform that I stood on, he drew a wide-brimmed hat down over his eyes and pulled up a handkerchief over his chin, drew his coat collar up and sat down on the second step; went back and found Mr. Appleton, and requested him to take up his ticket and keep it; when I got to Winooski I had Mr. Edwards with me on the platform, and as the cars stopped, the prisoner attempted to step off as usual. I seized him by the collar, hauled him up on the platform, and told him I must make a prisoner of him, he asked what was the accusation, I replied, "Nothing but murder." He said "that was very strange, as he was an entire stranger, and never was through here before in the world;" took him up the hill from the depot, Mr. Edwards had hold of his collar. I saw prisoner slipping his hand into his pocket; said to Edwards "look out for his hand." We took him into the tavern at Winooski; admitted to me that he had been through here once before, said he came through about a year ago in coming from Canada. Searched him; I drew from the pocket in which Mr. Edwards took out his hand a "seven-shooter," loaded, next drew out of his waist-band a "spring billy;" found a patch in his vest pocket, also found on him a lancet and a bottle of chloroform; and in his coat pocket among a parcel of songs, a certain paper. Said he was licensed to carry them, and that he used the chloroform for the toothache. Told me he was a boatman and was going to Rouse's Point to buy a boat; found in his pocket-book $3 in bills and a little scrip.

Rollin Pease. Was keeping a livery stable in this place at the time of Mrs. Griswold's murder. Had no teams out that evening but one, which Mr. Patee had. Heard of no fight between a party of men that night.

Henry Ballard. Visited the County jail to see Lavigne at his request the first or second day after his arrest. My impression is I carried something to the post-office for him within two weeks after his arrest; the letters were directed to New York City. Have carried quite a number of letters for him; can't recollect if any one was addressed to Mr. Pease of New York or not (Envelope shown to witness marked "O") Can't say if I carried that letter to the office. My impression is that the direction is in Lavigne's handwriting.

Cross-examined. Am one of the prisoner's counsel. Had some conversation with Mr. Bowman who testified yesterday. I asked him to give me in detail his evidence in this case; he did so in substance as given in court. I asked him if he was positive that the man he saw in jail was the man he saw with Mr. Potter at Essex Junction; his reply was, "there was a chance for a mistake about it." I said, "then

you are not certain this is the same man"; he further said that he had never said it was the same man. Have been somewhat active in looking up testimony in this case.

Edward H. Pease. Reside in New York City, have resided there 13 years. In August, 1865, was an expressman; am acquainted with Mr. Kelly; am acquainted with Lavigne or Ward; his name is Ward to the best of my knowledge, always heard him called by that name; recollect being with Mr. Kelly in an express wagon in New York one Tuesday, and seeing Mr. Ward on the sidewalk. Ward called to me. Kelly asked me his name and I told him. I had some conversation with Ward that afternoon, about where he had been that week. He asked me where the messenger was who came down the day before, said he had seen him in the country and rode a piece with him. He did not mention any place. [Envelope and letters marked "O" shown to witness.] I received those at my house..

Cross-examined. Ward did not board with me; he professed to be in the substitute brokerage; he was never a driver in the city to my knowledge; don't know Patrick Hayes or Jenkins.

Wm. B. Munson. Have been the keeper of the jail since last August; have never known Ward to complain of toothache in jail; saw him every day, sometimes three or four times a day. Ward has never to my knowledge received any money since he has been in jail. [Objected to and excluded.] Papers marked "S" shown to witness. Have seen this paper. It was handed to me in jail by Morris Flanagan, about two weeks since. Flanagan was then confined in jail. The envelope was sealed when handed to me. This letter (another one) is addressed to Mr. Counsellor Wilbur, Jericho Corners, Vt. Mr. Ward told me that he wrote the letter. The letter was handed me last Friday morning by Daniel Harrington in jail. I have here another letter addressed to Luman Drew; it is marked by my autograph; I saw Mr. Ward write that letter. About two weeks since, Potter told me I could help him if I had a mind to more than any man in the world. He said he would give me $500 to assist him or to do what I could for him. He took a $50 greenback out of his pocket and put it into my vest pocket; said he meant what he said. I took the bill out of my pocket and wanted to have him take it back; he refused and I laid it either on the bunk or on his knee; told him I would do all I could for him fairly and squarely and he said that was all he wanted; said I could help him about the jury if I felt so disposed. He mentioned some names that he thought would make good jurymen who he said had no ill-will against him.

Cross-examined. Potter referred to a prejudice against him in this county. Said he thought people were prejudiced; he expressed fears that he should not get a fair trial. His first remark was to the effect that I could help him have a fair, square trial. In calling the jury he wanted to call on men not prejudiced against him. Told him I had nothing to do about the jury, that I should call on

men that had not been spoken of to me. Think this was before he showed the money.

Andrew Jackson Merrill. Heard of Mrs. Griswold's murder Monday morning. Had never seen this man (Ward) before to my knowledge; have seen him once since in jail. There was no affray the night of the murder, there was no party of four at my house the night of the murder. Mr. Potter called at my house about the middle of the day, on Saturday he got a cigar, he came from towards Winooski and went back towards Winooski.

The *State's Attorney* then read the following letters:

BURLINGTON, Sept. 25, 1865.

Friend Pease:

I have been arrested in Burlington, and am now in jail. Tell Kelly that he must not know anything about me at all, if he is called on. I was taken off the train last beyond Burlington.

Recollect Kelly must not know me and I want you to tell him so. No more at present. Yours respectfully,

JEROME LAVIGNE,

Burlington Jail, Vt.

Don't write at all. Merely do as I tell you, &c. W——D.

This envelope was directed "In Haste" to Mr. Edward H. Pease, 324, 9th Avenue, New York.

BURLINGTON, Sept. 30, 1865.

Friend Pease:

I write again to inform that K., the rake, has been here looking at me, but did not say if he knew me or not. He told me he had not seen you at all; that he had not been in New York in three weeks. If you see him you will tell him to say that I am not the man at all, that he has seen the man in New York since. You will see the policy of this. He merely said here that he had seen me before, and when I asked him where, he said in New York, that is all very well, it amounts to nothing. I spoke a few words to him on the sly, and he said that he would not do anything that would hurt me. I want you to see him and talk to him on the subject. I have sent my brother seventy-five ($75) for him to pay the expenses of the party up here.

And I have got more ready when they come. I wish you would go and see him, and find out what he is doing in the matter. He stops at 439, 7th Avenue, cor. 37th street, in Strain's Porter House.

I have sent for him for a witness, and also for Strain and Jenkins, folks who I was living with, and Murray, who keeps that porter house, corner of 30th street and 6th avenue. Please go and see those parties and let me know if they are coming up, and also if you are coming.

Hoping that you will attend to those matters,

I remain yours respectfully,

JEROME LAVIGNE.

Direct all letters to Jerome Lavigne, care of Mr. Henry Ballard, Burlington, Vermont. I have got two lawyers in the case at present. Hurry them up down there, as the trial comes off this week. I have sent for eight (8) witnesses besides yourself. [W.]

Mr. Englesby next submitted a paper found by Mr. Flanagan upon the person of the prisoner Ward. The paper consisted of the song, "Pat Malloy," printed on coarse news print, with a fancy border. Upon the back of the sheet was scribbled a number of figures and the following: "John Ward, Canal Boat, F. J. Davis. Albany to Oswego."

THE TESTIMONY FOR THE DEFENSE.

Jackson Potter. Am a cousin of Charles Potter. Charles came to my house the Sunday before the murder in a covered carriage with wife and daughter Katy; remained all night at my house, said he was coming from home and going to Canada. We sat up that night until nearly ten o'clock; suppose he then went to bed. Went to the stable next morning before he got up. Charles' horse had no appearance of having been out the night before. They took breakfast. Wednesday morning he called at my house with the same team; think Katy was not in; he merely watered his horse, said he had come from Canada and was going home.

Electa Potter. Am wife of Jackson Potter; remember Charles Potter coming on Sabbath day, same day of the murder.

John A. Potter. Am cousin of Charles Potter. Mr. Griswold and Clark Potter stopped at my house about 6 o'clock Sunday of the murder, saw Charles next morning coming from Jackson's with the same company and wife and children, observed the horse, who looked well, he appeared fresh.

Edmund Waite. Keep the toll-gate in Sheldon, knew Charles Potter, remember his passing through about 4 o'clock Sunday of the murder, the first carriage with a young man and Griswold passed through just ahead of Potter's carriage, saw the same teams again Wednesday morning, then saw Potter's face, Potter's team did not to my knowledge pass through again Sunday night.

Edward Call. Remember when George Williams was at the table and the complaint took place about the meat; Dr. Ham was not there, he had not come, she said the meat smelt bad, Mr. Griswold said it was good, and eat a big piece, the old lady said nothing, but soon got up and left the table, Charles said if she did not eat any, there would be more for us, said nothing more, made no remark about giving money to any one to take her out of the way, made no remark about the devil.

Katy Potter. A man came to the house the Wednesday before Mrs. G. was murdered, father was not there, he talked with grandpa about the horse, talked about the black mare, grandpa said he could not have her, Ed. Call went down to the field and caught grandpa's horse, he took

dinner at our house, one of the middle fingers on his right hand was off, I noticed it when mother handed him his tea. He asked if there was any one that could take him to the depot, mother said Mr. Sullivan could, Mary Sullivan and her father were not at home, father said he could when he got up a load of grain, father said he was going after a stove and he could ride with him then, father took him off some time in the afternoon, he brought a stove back, never saw the man in the prisoner's box with my father, saw him first at the jail.

Patrick Hayes. Reside in New York, tend bar in a liquor store; know Jerome Lavigne; this is the man in court; have known him since May or April, 1861; first saw him in Albany. Saw Lavigne in my place 26th of August, 1865. Lent him $42, it was before dinner; he asked me for the money, saying he wanted to go to Albany with some friends of his in an Artillery regiment which was to be mustered out there. I made a little note of it (exhibiting note, a small note of hand for $42 which the signer agrees to pay within 30 days).

Katy Potter. Was at the table one day last summer when my grandmother complained of the meat, she said the meat smelt bad; father said he bought it early that morning; grandma handed the piece to grandpa, he said it was very nice and eat it. Grandmother then got up and left the table, father said if she didn't eat any there would be more left for us. Did not hear father speak of grandmother as a devil or use any such word, heard nothing about giving anything to take her away, Mr. Williams was at the table, it was, I believe, before Ham Potter came to our house.

Cross-examined. I remember distinctly all that took place on that occasion, am sure nothing more was said, and that I have stated it exactly, grandma ate a piece of potato and went away from the table, she was pretty angry, she said the meat didn't smell good, she spoke in an ordinary tone

IN REBUTTAL.

Avery B. Edwards. Reside at Winooski Falls, was at Mr. Griswold's house along the first of the horse fair last fall; was about the house and yard; a Mr. Potter, Mr. Charles Potter's brother, Mrs. Potter, Mr. Wilkins, Mrs. Griswold and three or four children, one of them a girl, was there; was whittling while there; have but three fingers on my right hand; one of them remarked that he or she had never noticed that before; I told them I lost the finger since I first knew them.

Cross-examined. This was after Potter's arrest; did not take dinner, or go into the house; was there near an hour; think it was Mrs. Potter spoke to me about my finger.

William D. Munson (recalled). Have seen the witness Hayes before, first saw him on the night of 27th March, on sidewalk, within four rods of the jail, stumbling about the sidewalk

and flourishing a bottle of liquor; arrested him and lodged him in jail. He was talking very loud at the time and was inviting the crowd to drink; staid in jail until nine o'clock next morning. He was confined in the same open jail with Lavigne but Lavigne was locked up in a cell. The cell grate openings were about four inches across. Lavigne and Hayes were together from 7 until 9 o'clock. Hayes gave his name as John Williams. At 7 o'clock the next morning he was very sober and anxious to get out; had about $3.50. Saw him drink twice from his bottle but don't know whether he feigned drunkenness; couldn't say whether any of the respondent's counsel came to the jail that afternoon. The counsel came very often, especially Mr. Ballard.

The Counsel on both sides addressed the jury:

THE JUDGE'S CHARGE.

Chief Justice Pierpont said that much time had already been occupied in the trial, and that he should not long detain the jury. The respondents Ward and Potter are indicted for the murder of Mrs. Griswold. Though the indictment is against them jointly, it will be competent for you to find one guilty and the other innocent.

There is no question that a murder was committed. The question is, was either or both of the respondents guilty of it. It is conceded that Potter was not present at the deed. But it is claimed that while Ward was the perpetrator, that Potter was a participator in it.

The first question, and in a sense, the main one, is if Ward was the perpetrator; if not, the prosecution fails also as to Potter. This is solely a question of fact for the jury to determine from the evidence. The testimony is fresh and has been fully commented on.

In judging of the question of identity the jury must remember that identification of persons under such circumstances is commonly a matter of more or less uncertainty. You must bring your best judgment to bear on all the circumstances, and decide the question of identity. Coming to Hayes' testimony, if that is true the Government fails. The question as to that is "is it reliable?" If not so—if the jury find proof of a scheme to introduce false testimony, concocted

in jail between Hayes and Ward, it throws suspicion on the latter, and on his defense. It will not be enough to establish a probability of guilt. It must be established beyond a *reasonable doubt.* There must be a moral certainty that satisfies the judgment. To convict Ward you must believe him guilty, and believe it because it has been proved beyond a reasonable doubt by the evidence in the case.

Next as to Potter. The Court has been asked to charge that there has been no evidence connecting him with the murder. That is a responsibility which the Court declines to take. It is a question for you to settle.

The Court is also requested to charge that you would not be justified in finding Potter guilty unless he was present and abetting the act. He is indicted not as an accessory before or after the act; but as a participator. You must consequently find that he *was* a participator. To be such the Court charges that it was not necessary he should have been present. If you should find the act to be as charged, that Ward and Potter devised a plan for the murder, in which each was to have a part, and that Potter, in fulfilment of his part, removed the family so that Ward should have the opportunity to commit the act, it makes no difference whether he took them to a distance of 40 feet or 40 miles. He would be in such a case as guilty as if he stood by and held the hands of the victim, so that she could not resist. There is no evidence of any arrangement between Ward and Potter previous to Ward's appearance in Williston, and until such arrangement has been shown no statements of Ward are evidence against Potter. The fact that Ward was inquiring for Potter, on his way to Williston, is evidence only that he was the man who was at Potter's. If he was, he was where a plan could have been formed. His presence there and the talk about horses is all consistent with innocence. But they *could* have then planned the murder; the question is if they did so.

As to the question of inducement, it appears that Potter's wife was the heir of Mrs. Griswold, and it is said this furnished an inducement to the murder. This may be true to a certain extent, but it is such an inducement as any man has

to take the life of one of whom he is the heir. Few men but have such an inducement, to take the life of somebody. Yet murders from such inducements are the least frequent. They are contrary to human affection, and such inducements rarely induce murder.

In this case, the life of old Mrs. Griswold stood between Potter and immediate possession of the property. Taking all the circumstances, there seems to have been no great ill-will or animosity between the Potters and Mrs. Griswold, and that more on the old lady's part than on theirs. There is, on the whole, little evidence that any arrangement was entered into between the respondents. Whether there was or not rests with you to determine from the facts. The evidence being wholly circumstantial, great caution is necessary. The jury must see if the chain of circumstances is perfect, for if a single link is defective the chain is broken. As to Munson's testimony, if you are satisfied that Potter's object was to bribe him to pack a jury, such an act would be a great impropriety, and would show that he did not rely on his innocence to protect him. If, on the other hand, all he desired was to secure a fair trial, while it was improper for him to offer the Sheriff money, it would not bear so much on his guilt. How that was you must decide.

Gentlemen of the jury, you will now take the case and return such a verdict as your best judgment and your consciences require, remembering that the respondents come before you under the legal presumption of innocence, until they are proved to be guilty beyond a reasonable doubt.

THE VERDICT AND SENTENCE.

The Jury retired at a few minutes after 4, and at a quarter to 6

The Clerk said: "Gentlemen of the Jury, have you agreed upon your verdict?"

The Foreman. We have.

The Clerk. Is the respondent, John Ward, guilty or not guilty.

The Foreman. Guilty.

The Clerk. Is the respondent, Charles H. Potter, guilty or not guilty?

The Foreman. Not guilty.

THE COURT sentenced the prisoner to solitary confinement in the State Prison at Windsor for one year and then to be hanged on a day to be fixed by the Supreme court. In January 1867, his conviction was affirmed by the Supreme Court and he was transferred from the prison at Burlington to the State Prison. He here made several attempts by attempting to bribe the Guards and by writing letters to outside friends that were however intercepted by the authorities. In January 1868, the Supreme Court appointed March 20th as the day of execution of the capital sentence but this was not communicated to Ward until the second day of March. On March 19, yielding to the entreaties of the Prison chaplain he wrote out a lengthy confession.

THE CONFESSION.

The confession began by a statement which he said was hearsay so far as he was concerned as he admitted to the effect that Ephraim and Potter having determined to get rid of Mrs. Griswold on account of her ungovernable temper and having failed in their attempt to have her placed in an insane asylum asked a man named Disbrow, who had come from New York to sell them counterfeit money, if he knew of any one whom he could get to put an end to her. Disbrow told him that he did know several whom he could get to do it, but that it was possible that he could not lay his hand upon one just then, but that he would see as soon as he came down to New York. Disbrow then asked Potter what he was willing to give to have the job done in good shape, and Potter told him that he would give $300 cash down, and that the person who did it might take all the valuables he could find in the house; these consisted, as he said of about $300 worth of silver ware of different kinds, and about $250 or $300 worth of jewelry and furs, belonging to the old woman, making, all told, about $900. Disbrow promised to attend to the business as soon as he got to New York, and they separated.

The confession then continues:

I was at this time stopping at the New England Hotel, corner of Bayard street and the Bowery, under the name of William Ward, and one Sunday morning a man by the name of Edward H. Pease whom I was acquainted with, called upon me accompanied by a stranger, whom he introduced to me by the name of Charles H. McComber and who told me that he would like to have me take a trip with him through New Hampshire and the Eastern states. He said it was worth about $1000 and that I must be sure to do it alone; that the job was a burglary put up by an old lady's son-in-

law for the purpose of vexing her. Gave me a letter of introduction to a man named Charles H. Potter, Williston, Vermont and signed by a man named John Disbrow. I found a man named Walter Moore and he agreed to accompany me and whatever the affair would bring to divide it equally between us. On Monday, 21st of August, we started for Burlington, Vermont. On the route I told Moore all I knew about the case and who I had got it from, showing him the letter of introduction. We stopped the first night at the Champlain House in Burlington and decided that Moore should go to the place first and deliver the letter. Next morning went to Potter's house and delivered the letter from Disbrow. Potter afterwards told him that it would have been just the same if he had given the letter to his wife as she was privy to everything and was well acquainted with Disbrow. Potter unfolded the whole thing to him, and asked him if he was ready to do it. Moore at first refused to have anything to do with it, if blood was to be spilled, alleging that he had been given to understand that it was nothing but a burglary. Potter told him it was both. Potter invited him to come and take dinner, which he did. After dinner, Potter, to impress upon him the ease with which the affair might be done, took him into the main parts of the house, and showed him where all the silverware was kept, and also the bureau in which the old lady kept her jewelry and other finery. He also showed him how to get into the house, and told him that all those closets would be left open for him on the night that he would do the job, so that he might have no trouble. Potter then took him to the barn and showed him a full set of burglar's tools of all kinds, and told him to pick out any that he wanted to use. Moore told him that he would give him his decision about it the next day. Moore came back to Burlington and told me all about what the job was, and asked me if we should do it or not. I would not do it at all, and told him so, in so many words, but he began to recount all that he had seen on the route, and about the tools and what all the stuff would bring, and how easy it all could be done and so on, and ended by saying that Potter would call and see him, the next morning, for his decision. I advised our immediate return to New York. We found that we had only about $12 between us and our hotel bill to pay out of that. This determined us to stay and see Potter in the morning. The next morning Potter called to see us. I deemed it best to keep in the background until all was done and then get the whole affair from Moore. After talking about an hour they separated, Potter driving off in his wagon. Potter had given him ten dollars to pay our way for the present and also made an appointment to meet him the next Saturday morning at the hotel in Winooski. The conditions of the affair were that Moore should have $300 down and all the silver, jewelry and other articles which he wanted to carry away from the house, and in lieu of the silver, if he did not take it. Potter was to pay him $300 more as he computed it to be worth that amount. Potter was also to see that there was nobody in the house at the time except the old woman, all the rest were to be away. He would also file the latch of the

back door in such a way that by taking hold of the door on the outside, it could be lifted over the latch inside. The closets were all to be left open, and he was to take out what tools were necessary, and leave them where we could find them. He also left a large black bag, so that it could be used in carrying away the articles we took. When he saw Moore on the Saturday following he would have the money ready, and give him his final directions. I advised him to throw up the whole thing and start at once for home. But he demurred and said it was so easy a thing that he hated to do so, saying that if he got this stake it would carry him to South America, where he had for a long time been trying to go. I then asked him for money enough to pay my own fare home and that he might do the job alone and have all that he could get for himself alone. He would not do this, saying that as we both had come together that I ought to stay and assist him as it was I who first proposed it to him and that he did not consider it manly in me to back out when we were on the eve of doing it. This taunt irritated me and I determined to show I was as good as he. But I told him I would not take any hand in cutting or killing anybody; this he might rely upon. Next morning Potter came and took Moore with him and they went to the blacksmith shop, and after the wagon was repaired he and Moore got in and drove off together. I went to the depot and waited until Moore rejoined me. He then told me that everything was arranged, that he (P.) had it all fixed, so that the coast would be clear on the Sunday night following. Himself and his family would then be away on a visit, and the old man G. would be away on business and there would be nobody at the house but the old lady and a boy. Next morning P. came and saw Moore at the Junction, and gave him $100 and a revolver, [the same one now in the possession of the District Attorney at Burlington], and a bottle of chloroform, [now in Englesby's hands also.] The reason he gave for not giving the whole amount of money to Moore was, that he wanted some guarantee that Moore would not beat him out of it, and as Moore had no guarantee to give, except his word, he (P.) determined to keep the money in his own hands until the work was done, and that he would then send it to any address Moore might name, rightly judging that M. would not give up the job after it had gone so far. Moore was mad, but he could not help himself, and had to put up with it. I again advised him to drop the whole thing, as I did not believe the other party would keep faith with him after the affair *was* done. I saw it was no use to talk to him about giving it up, so I said no more about it. Some persons who will read these lines, after I am in my grave, will say, why did he not stop there, and have nothing more to do with the transaction, when he saw what kind of a man Potter was? Why did he not leave the affair to his associate, and get home the best way he could? Why did he not speak out and tell us all this, at the time of his arrest? Why not do so, at the time of his trial? Why not tell about this, since his confinement in Windsor? To persons who talk thus, I will say that they know but very little of the passions

of the human heart. It is very easy for a person sitting by his comfortable fire, with all the comforts and luxuries of life around him, to talk, and ask why do men do this, why do they do that, when, at the same time, if they themselves were exposed to the same temptation, they would sink under it, as soon as those whom they criticise. But to proceed with my story.

Moore and myself went back to the hotel, along toward night, and got supper, each one appearing as a total stranger to the other. After supper, I paid my bill to Mr. Fish, the person in charge of the house, and left, making an appointment to meet Moore at the covered bridge after nightfall. He came about nine o'clock, and we proceeded together to Potter's house. Just before getting there M. stopped, and struck a light, and went to an old hollow log by the roadside, and inserting his hand, drew out a small iron bar about two feet long and an inch thick (technically called a "Jimmy"), and some pieces of cord, all of which he handed to me to carry. We then went on to P.'s house, and found it all dark and silent. We walked around the house for some time, until we supposed it to be about 1 o'clock; we then proposed to enter the house.

While coming up the road, I had told M. that I would have nothing to do with hurting anybody in the house, and that he might depend on it. He said he did not want me to; that he would do all that part of the work himself; but that if the person should overpower him in the struggle, he would call on me to assist him; this I promised to do. We then went and fastened the latch of a door leading up stairs from the outside to a room in which the farm boy was sleeping.—We then turned to the door leading into the back of the house. I entered first, with the "Jimmy" in my hand. Moore followed close behind me with a "billy" [The same one now in Englesby's hands.] in his hand, ready for action. I then passed to the door leading into the front room, and tried to open it, but found it fast. I heard a door open in another direction, and by the starlight, I saw an object enter the room, and saw it was a woman by the drapery. Moore at once sprang forward and grappled with her, and commenced striking her with his "billy," but nearly all the blows missed, and she continued to scream louder than ever. Moore then grappled with her and threw her down, and in falling they struck the stove and knocked something off from it. This the old woman caught and struck Moore on the head with it, cutting him severely over the eye. Moore was then holding her by the throat to stop her screaming, but when he was hit, he called to me to come and hold her hand; I stepped forward and did so. Moore then got hold of his "billy" again, and struck her on the head several hard blows. He then took a knife from his pocket, and cut her with it, and in doing so broke it. I kept hold of the hand until I felt it relax, and then dropped it.

At that moment, I would have given all I had ever seen to be out of that cursed house. I started to go out by the way we came in, but Moore divined my intention, and put out his hand and stopped me, saying that it was all over now, and that he wanted

me to bind up his head, as he was all cut. I then struck a match, and looked around, and saw a candle on a table at one side of the room. I stepped toward it, but my light went out, and I slipped in a pool of blood on the floor, which immediately saturated my clothes to the skin. This is the full share that I took in that deed of blood that night. I did not strike or cut that old woman in any manner. I did nothing but hold her hand, so she could not strike Moore; if this is Murder, then I am a Murderer in the sight of God and man. I, however, consider that I am not, as I used no violence whatever towards her, nor did I strike her, during the whole transaction. Since that night, I have never had my conscience trouble me in any particular, because I considered that my hand was not reddened by anybody's blood; this it is, which has supported me in all the trials through which I have passed.

After we had got a light, I looked around the room and saw the corpse lying in a pool of blood in the middle of the floor. The first thing I did, was, to get some cloth and bind up Moore's head as well as I could; then we took the body between us, and carried it to the place where it was found. I asked Moore the meaning of this move, and he told me that Potter had requested him to do it; we then came back to the house and fastened the door. We then forced the door leading into the front room, and went to the silver closet, but it proved to be nearly all plated ware, so we did not take it; all there was that was good was about a dozen spoons, a small pitcher and finger bowl. We then forced our way into the closet, where we expected to find the jewelry and other valuables, but we could not find a single article, although we ransacked every part of the house for them. We then packed our bag with silks and other things, and took two pieces of the plated ware to fill up the bag. In carrying the old woman out of the house, I had got my coat and shirt sleeves saturated with blood, and I knew it would show in the daytime, so I looked around for one to replace it, but could find nothing only an overcoat much too large for me, but I was obliged to take it. Moore had got hardly any blood on him except on his knees, which I wondered at much as he was on the floor all the time of the scuffle. After we had got all of any value that we could find, we prepared to leave the house, and, after closing all the windows carefully, we did so. We came first to the main road about two miles from the house, and then came directly to Burlington on foot, which place we reached about daylight. We both went direct to the Howard House, and washed ourselves, and then went to the Dye-house, just behind the hotel, and washed all the blood from our pantaloons. When the stores were opened, Moore went and got each of us a cap and some other articles, and we then went to the Lake House and got breakfast, and afterwards went to the Depot and stayed there until the first train went out to Rutland. Moore determined to go by steamboat from Burlington to Whitehall, and I by rail, by way of Rutland; we were to meet at Greenbush, opposite Albany, and then proceed together to New York.

While waiting for the train to start, I saw the messenger, named

Kelly, come and go into the car, and as I had often seen him in New York, I determined to try and get into his car instead of the regular passenger car, as I would then be screened from observation, which the large coat I had on, subjected me to. I then came forward, and introduced myself to Kelly, and told him what I wanted, and gave the names of several men as references, whom he knew in New York, among them the name of Edward H. Pease, who worked for the same Company as himself. He did not like to let me get into his car at Burlington, as it was against the regulations of the Company, but told me that I might get in at Vergennes, the first stopping place, and when the train reached there I did so, and rode with him to West Rutland. There I left his car, and got on to another train, and came through to Troy, N. Y., direct.

While in the car with Kelly, he began to question me as to my reason for wishing to ride with him instead of in the regular passenger car, and I then told him some such a story as is embodied in his testimony, given on oath at my trial in April, 1866, and although there are some sentences in it that I never uttered, still it is, in the main, correct. Moore and myself met in Greenbush, as per appointment, and proceeded together to New York. The next day we disposed of all the things we had brought with us, except the silver,—that we kept. What we sold, brought us about $25 apiece in the pawn shops.

Things went on this manner some two weeks, and during that time I had moved from my hotel to private lodgings. One day I went to see Moore down town, and he proposed that I should go up and see Potter on the subject of gettting the remainder of the money due us, and let him know at the same time what participation *I* had in the affair. Moore would have gone himself only for fear of recognition, from being seen so much with Potter previously, while I would be almost a total stranger to everyone in the neighborhood, and especially so to Potter himself. Moore and myself wore our beards about alike, and he advised me before going to have my face shaved clean; I did so a couple of days before I started. About this time our money began to get low, and it became necessary to dispose of the silver, in order to get money for my trip. We accordingly disposed of it at Simpson's, in the Bowery, and at Coon's in 7th Avenue. It brought about $40, which we divided equally. Moore then gave me the bottle of chloroform and the revolver, given to him by Potter, and also an eye patch, which Moore had got hold of in the scuffle with the old woman; all of which I was to deliver to Potter. I was to insist on Potter making good the amount of money he said the jewelry was worth, which we could not find, and the full amount of the silver which turned out to be nothing but plated ware, deducting of course the amount we had taken away. This would make the whole amount for me to collect about $800.

I started on the evening of the 18th of September for Burlington, and reached Troy at night. When I got to the Vermont Central Depot at Charlotte, and while waiting for the train to start, I saw a

man pass by me, as I was walking in the shed close to the train. The train was so crowded that there was hardly standing room in the cars, and I, with several others, took our seats upon the platform. When the train reached Winooski, I was arrested by the man whom I noticed looking at me on the train, and eventually turned out to be Flanagan. Potter was arrested the same night, a joint indictment of Potter and myself followed, after that, a trial; Potter acquitted, I convicted. This is what the public know of the case, but there was an *under current* of which the public know nothing, and which *I* propose to make as clear as possible in the few brief moments that are left me. [I have forgotten to mention, that at the time I was arrested, all of the articles that I was to give to Potter were taken from me by the officer, with the exception of a little note of explanation from Moore, which I had concealed in a pencil case.]

A day or two after my arrest, I found an opportunity to send this note to Potter, and a little while after, he came to a small hole that connected the two rooms in which we were confined, and talked for some time with me, and I then found out how the situation was. He told me that he had been arrested on account of what was done, but, as there was no evidence against him they were obliged to let him go; that he had got everything fixed right now, and that he intended to have gone to New York the week following, and settle everything with Moore, only for being arrested now. He then asked me if I had any money, and I told him I had not. He then told me to send my lawyer, Mr. Ballard, up to him the first time he came to see me, and that he would send me some. I did so, and he sent me two hundred dollars by Mr. Ballard. Part of this sum I had Mr. Ballard send to New York, the remainder I kept for my own use. He also told me to keep still and quiet, and to be sure not to talk to anybody about the case, only my counsel, and no more than I could help to them; that there was no evidence at all that would convict us, and that he would stand a friend to me long as he had a dollar. These were very good words, and if he had carried them out, all would have been well, but he failed in the most essential point; that is, the dollars.

These are my reasons for not speaking out at my trial; these are my reasons for not speaking after my trial; these are my reasons for not speaking since I came to Windsor; these and many others are the reasons why I have attended to Charles H. Potter's interest instead of my own; these are the reasons that have kept my tongue tied for two years and six months. Even here in Windsor, I still thought he would still do something for me, in some way or other; but he has not, he has not even *tried* to do anything for me. I have occupied a loathsome cell, while he has been breathing the free air of Heaven. I have kept silence, until silence ceases to be a virtue. He and old Griswold have been living in plenty, and having everything at their command, while at the same time they are, both of them, more guilty of this terrible crime than I, or in fact the man who drove the knife to the old lady's heart. He, backed up by Griswold's gold, can defy the law, but retribution *will* come, sooner or

later, and then he will know how he has made others suffer. To-morrow I go to the gallows, while he is living in luxury, but I consider myself the happier man of the two; my conscience does not trouble me, and, although my bed is coarse, I sleep sounder than he. He and his myrmidons have kept mé quiet by stuffing me with good words and promises, which they never intended to fulfill. They have succeeded in keeping me quiet, until the little evidence I had against them is of no consequence to the authorities, and now they can laugh at me. They will laugh at this statement, coming, as it does, from a condemned convict in a State Prison, written by a man with a halter around his neck, but God, in whose presence I am soon to stand, knows whether I tell the truth or no. He must be the arbiter of our fate. I have sought to conceal nothing, but there are many incidents that may possibly have slipped my memory in this hasty sketch; they might be trifling in themselves, but, as links in the great chain, they might be powerful.

I will now conclude. It was my intention to offer a few remarks on some of the witnesses at my trial, but I have not time, the hours are short, and I must close. I leave him and all others to the mercy of our Common Judge, at whose bar we must all stand at last.

THE EXECUTION.

March 20.

The following account of the execution is taken from the Chaplain's book.

At a few minutes past one o'clock Deputy Sheriff Stimson and his aids appeared at the cell and asked him if he was ready. He said with a loud sigh, "Yes." I stepped out and left him alone for a moment; when he came out and was taken by the two assistants to be led in the solemn procession, headed by the Deputy Sheriff and Chaplain, to the black scaffold and the fatal drop and followed by the legal witnesses of the execution. He mounted the scaffold, took his place on the drop with amazing calmness and firmness of step, but with frequent sighs, long drawn and deep; after a prayer by the Chaplain, the death warrant was read by Sheriff Stimson.

He was then asked if he had anything to say. Ward said with remarkable clearness, "that he never struck the old lady a blow; that he had made a full statement of his participation in the deed, which was in the hands of the Chaplain; that he solemnly averred, as in the presence of his Maker, what he had said was the truth, and nothing but the truth." The executioners then prepared to confine his limbs, upon which, as he yielded his hands to them, he looked toward me and placed in my hand his handkerchief. After his limbs were fastened, he shook hands with the Sheriff, Mr. Flanagan, and the Chaplain, Mr. Pollard and Mr. Stone, and Rev. Mr. Pierce, and said, "Good-bye, all," when the black cap was drawn

over his eyes. The Sheriff then stepped forward and said, "The time is now come for the extreme penalty of the law to be executed on you, John Ward, alias Jerome Lavigne, and may God have mercy on your soul." His foot then touched the spring, and in that instant the culprit was in eternity. A shudder thrilled the spectators, but scarcely a motion of the victim's body was discoverable. In five minutes pulsation ceased, and in twenty he was dead. In thirty minutes the body was taken from the rope and placed in the coffin. A crowd passed around to see the corpse. As the coffin was about to be closed, I stepped forward and examined the body, and asked Dr. Stiles if the man was dead. He said, "I pronounce him dead." The remains were then borne to the grave within the yard, and committed to the earth, with the usual religious form. Application was made for the body, for surgical purposes, but the law is explicit in regard to the disposition of the body, and is deposited where it cannot easily be removed, without permission. Thus closes one of the saddest scenes of my life.

THE TRIAL OF JOSEPH NEET AND OTHERS FOR SABBATH BREAKING, LEXINGTON, MISSOURI, 1899.

THE NARRATIVE.

One Sunday afternoon in the summer of the year 1899, two base ball clubs, one composed of white and the other of colored men, the one from Kansas City, the other from the City of Lexington, were engaged in a game of base ball in an enclosed park just outside the latter place, when they were arrested together with the umpire and the ticket sellers at the gates. A good many people had paid twenty-five cents each to get into the grounds and many more were watching it from the hills outside when it was thus interrupted before three innings had been played.

A few days later the players and officials to the number of 21 were prosecuted in the Criminal Court of Lexington. The information (which in Missouri may take the place of an indictment) was brought under the Sunday law of the state which in one section prohibits the doing of "work and labor" and in another prohibits "horse racing, cockfighting or playing at cards or games of any kind on the first day of the week, commonly called Sunday." It had one count charging the men with being engaged in "work and labor" and another with playing a "game" on the previous Sunday afternoon.

But the only witness for the State who testified as to the first count declared that he did not consider playing base-ball work but rather pleasure, so the judge told the jury that they could not convict on that count but that he thought they were clearly playing a game within the law. So the jury brought in a verdict of guilty and the twenty-one were fined. Most of them paid at once, but when Joseph Neet

refused to do so he was lodged in jail by the Sheriff. But the Supreme Court granted him a *habeas corpus* and after hearing his lawyers ordered him set free. That tribunal declared that the words "games of any kind" in the statute meant games of an immoral tendency like horseracing, cockfighting and card games played for money, and that to extend these words in the way the prosecution wished them extended would make criminal "every game that ever was or ever will be invented, no matter whether it was harmless, promotive of physical or mental development or deleterious to both. It would prevent games of chess, backgammon, jacks, authors, proverbs, faro, keno and poker alike. Such a construction would curtail many of the pleasures of many of our people, without elevating them or improving their moral tone." And it also pointed out that this statute was passed in 1835 at which date the game of base-ball was unknown, and could not therefore have been in the minds of the lawmakers.

THE TRIAL.[1]

In the Criminal Court of Lafayette County, Lexington, Missouri, June, 1899.

Hon. John A. Rich,[2] *Judge.*

June 10.

By an information (which in Missouri may take the place of an indictment) Joseph Neet and twenty other persons were charged with the crime of Sabbath breaking under the statutes of the State which provide:

[1] *Bibliography.* "No. 10108, ex parte Jos. Neet, petitioner vs. Jno. A. Fulkerson, Respondent. Habeas Corpus, Wm. Aull, Attorney for Petitioner and filed April 3, 1900. Jno. R. Green, Clerk."

"In the Supreme Court of Missouri, Court in banc April term, 1900; Ex parte Jos. Neete; Edward C. Crow, Attorney Gen. Clarence Vivion of Counsel."

"In the Supreme Court of Missouri, April Term, 1900. Court in banc; Ex parte Jos. Neet; Statement and brief for petitioner; John S. Blackwell & Son and William Aull for petitioner." "Missouri Supreme Court Reports, Vol. 157, 1900."

[2] Rich, John A. Born Liberty, Mo., 1855; Grad. Cent. Coll. Pros. Atty, Saline Co. Judge Criminal Court, 15th Circuit, 1898-1920.

Sec. 2240. Every person who shall either labor himself or compel or permit his apprentice or servant or any other person under his charge or control, to labor or perform any work other than the household offices of daily necessity, or other works of necessity or charity, or who shall be guilty of hunting game or shooting on the first day of the week, commonly called Sunday, shall be guilty of a misdemeanor and fined not exceeding fifty dollars.

Sec. 2241. The last section shall not extend to any person who is a member of a religious society by whom any other than the first day of the week is observed as a Sabbath, nor to prohibit any ferryman from crossing passengers on any day of the week.

Sec. 2242. Every person who shall be convicted of horseracing, cockfighting or playing at cards or games of any kind, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor and fined not exceeding fifty dollars.

Sec. 2243. Every person who shall expose to sale any goods, wares or merchandise or shall keep open any ale or porter house, grocery or tippling shop, or shall sell or retail any fermented or distilled liquor on the first day of the week, commonly called Sunday, shall on conviction be deemed guilty of a misdemeanor and fined not exceeding fifty dollars.

Sec. 2244. The last section shall not be construed to prevent the sale of any drugs or medicines or articles of immediate necessity.

The first count charged that R. Vaughn, Joseph Neet, Wm. Davis, John Coates, Walter Lindsay, E. Hayden, Hy. Hicks, John Lindsay, Frank Lindsay, Al. Rouse, James Lindsay, Matthew Mady, Fred Weeks, Henry Rhode, Roy St. John, Harry Kurder, Alex. Hanson, Rich Kenny, Norton Colman, Ira Harman and Frank Wilson on June 4, 1899 at the County of Lafayette and State of Missouri "did then and there unlawfully play a game of base-ball on the first day of the week commonly called Sunday against the peace and dignity of the State."

The second count charged that the same persons, at the same time and place did then and there unlawfully engage in certain labor and work, to wit: by then and there laboring and working at a game of ball, commonly called base ball, for certain money and certain per cents. of the receipts so then and there taken in, by then and there charging an admission fee of twenty-five cents for each one who attended

the said game, in which said employment, vocation, labor and work, they were then and there found performing on the first day of the week, commonly called Sunday, the said labor and work and employment not being then and there a household office of daily necessity or work of necessity or charity, but the said work, labor and employment was then and there of an immoral tendency against the public morals and against the peace and dignity of the State.

The third count charged that the same persons "on the first day of the week, commonly called Sunday, did then and there, at and near to a public highway leading from the city of Lexington to Myrick, in said county of Lafayette, and near to and in plain view of a number of residents and inhabitants and families of this, the said county of Lafayette, meet and assemble themselves together for an unlawful purpose, and did then and there divide off into two contending sides, and unlawfully, openly, notoriously and shamefully play at a game of ball, commonly called base ball, for hire, money and certain per cents. of the receipts so taken in then and there on the result of said game, which sum of money so taken in by said receipts was a large amount, to wit: about one hundred dollars, wherein did then and there assemble a large number of people, to wit: about five hundred, to witness the said game by paying then and there an admission fee of twenty-five cents for each one, then and there thereby desecrating the Sabbath, greatly to the annoyance and disturbance of a portion of the inhabitants of this State, and against public morals and contrary to law; against the peace and dignity of the State."

All of the *prisoners* pleaded *Not Guilty.*

Clarence Vivion,[3] Prosecuting Attorney, for the State;

[3] VIVION, CLARENCE.. Born Winchester, Ky., 1855; Removed with his parents to Mexico, Mo. 1869 where he was educated and taught school for some years. Studied law and was admitted to bar 1882, and began practice at Higginsville, Mo. Pros. Atty. Removed to Cal. 1919.

William Aull,[4] *John M. Price* and *John S. Blackwell*[5] for the Prisoners.

The following Jurors were empaneled and sworn:

George Chamblin, James Dinwiddie, Albert Evans, P. D. Williams, John Kohlston, Frank Becker, C. Q. Kinkead, C. C. Ellmaker, William W. Higgins, James W. Winn, P. H. Koppenbrink, and John Barnett.

THE EVIDENCE.

George Clark. Live in Lexington. Sunday afternoon I went down to the park where they play ball, southwest of town here, about a half a mile, I guess, at the side of the road that goes from here to Wellington. There is some small residences along there, don't know how many, I think three or four, something like that, occupied by the citizens of the county I think. These defendants here, none of them did I know from Kansas City at that time. Only one I knew that was playing with them was Mr. Neet; I knew him by him being from here. The parties living here in Lexington, I knew most of them; Al Rouse and several I recognized. These defendants from Kansas City who are in the court room I recognize them as being down there as the contending nine on Sunday. I seen them playing ball; they call it base-ball; don't know much about it myself. Did not see anyone pay any money at the gate. I gave half a dollar for myself and another man. Who the gatekeeper was I could not tell, I did not notice, a black man I think. I think about one hundred and fifty or two hundred, something like that were inside. There seemed to be a great many people on the side of the hill outside. Am a saloon proprietor. Saturday night Al Rouse and two or three other colored men in my place were counting up and each one was giving in the amount of money he had collected after the ball game was over. They owed me ten dollars and they paid me about ten dollars.

Cross-examined.. The nearest residence must be two hundred feet, a small cottage, do not know whether white or colored people live there. Did not notice driving on that road except those going to and from the game. Have seen a game of base-ball played but am not much posted.

[4] AULL, WILLIAM. Born Lexington, Mo., 1857; Grad. Univ. of Va. 1882; admitted to bar and practiced at Lexington, 1882-1920. Pros. Atty. 1890-1897.

[5] BLACKWELL, JOHN SAMUEL. (1832-1908.) Born Anderson Co., Ky. Removed to California, 1850 where he was admitted to the bar, afterward removed to Nevada and from there to Missouri in 1865. Pros. Atty. Lafayette Co., 1872-1886, Delegate to Nat. Rep. Con. 1892.

Do not know what constitutes a game of base-ball, how many innings.

To Mr. Vivion. How long had they played before they were arrested by the officers? I don't know exactly, would hardly think it was over twenty minutes. The umpire was a stranger to me, he was a white man. As regards to the players, a colored team was on one side and a white team on the other. The gate-keeper was colored, I don't know his name.

To Mr. Aull. These parties being attracted there, were there to see the game, I would say from the appearance of them. I was there to see it too. Can't say that any of these defendants had anything to do with that gate entrance fee. I walked to the gate and gave half a dollar for myself and the other gentleman and walked in, that is all.

Charles A. Rex. Am constable of Lexington township; remember a game of base-ball being played here between some white men and some colored men on Saturday, the 3rd day of June and of them playing on Sunday, the following day, down here close to the station of Myrick in Howard's park. Went there with Mr. Oscar Thomas and Mr. Jim Good, the deputy sheriff. At the gate there was Al Rouse and some white man from Kansas City, don't know his name. Several people came there and paid a quarter repeatedly to Rouse and he dropped it in a little grip sack they had there and the people went on in. There were two or three hundred on the inside, I suppose; on the outside a big crowd. That ball park has no fence to prevent outsiders from looking in there. Inside of the railroad fence they have a canvas stretched along about eight feet high, I suppose, that goes down about two feet from the ground. From the hillside and on the railroad and the houses up there you can look right over this canvas. There is five houses there, right close there. I went in about fifteen minutes before Sheriff Fulkerson came and they just played once while I was there inside. These men are the ones we brought up town, our own town boys here; our colored town boys. They divided into two sides. When I opened Al Rouse's grip sack and looked into it there must have been fifteen or twenty dollars there. Did not see the other party who took in the money; don't know how much he had. They came to me and asked me if they could play ball on Sunday. Jim Lindsay and another and I told them I would see Mr. Vivion; seen Mr. Vivion and Mr. Vivion said no, sir, and I went and told them. I was up here in Mr. Clark's saloon on Saturday. I was not in the saloon on Sunday. We were talking about the game and they said it was a shame they could not play ball on Sunday; they said they could make a right nice little stake. I asked them what could be made out of it. I understood them to say they would get sixty per cent of the money if they beat. How many were playing I can't tell. These white men and darkies were there playing ball, divided off into two sides, the whites against the blacks. This white team Jim Lindsay told me it came from Kansas City. Rouse

is a colored man, he took in the money at the gate. The white man was with him, I don't know his name, for he was arrested that evening.

Cross-examined. How long has this park been used for base-ball? I don't know, they played several games there last year but none on Sunday. Do not know what became of the gate receipts. Never saw any of these parties that played ball in possession of any of the gate receipts. In the satchel Al Rouse had saw dollars and quarters and dimes and nickels and half dollars; fifteen or twenty dollars I judge.

To Mr. Vivion. There were more outside the park than there were in; lots of little folks down there, children black and white and lots of grown people up there, inside and out. I know that they played half of one inning. The white boys were playing when I got there and the colored boys shut them out and the people that was standing around there yelled and hallowed about it because they shut them out.

To Mr. Aull. I did not arrest the people that did the yelling; did not see any of them arrested.

John A. Fulkerson. Am the sheriff of Lafayette county. I arrested the defendants here. I went down to the ball grounds near Myrick, 100 or 200 feet from the road, I guess. Approached the ground; they were pitching a ball from one to the other and a player was batting and they had some men out in the field; don't know whether they called that playing or just called it practicing. I came back to Lexington to Mr. Vivion's office and got a warrant, went back to the ball grounds and arrested twenty-one. They were playing base-ball; it was either the first half or the last half of the third inning when I stopped it. There was a great many people there in seats on the south side of the grounds, a great many standing around and a great many on the outside and a great many setting along the railroad and on the hills there and there was a great many in wagons and buggies. Heard yells and some cheering as I got to the houses. I went in at the gate where the vehicles went in and saw people going in at a smaller gate. Ed Hayden had a small leather satchel with a strap around his neck and it hung in front of him open. Noticed a little money in it; I did not pay any particular attention to how much. Arrested the boys on that Sunday and brought them up town.

Cross-examined. Nine innings constitute a game of base-ball. The first time I went they were not playing they were practicing. There was a wire fence around part of the park or around all and on two sides there was a canvas stretched, on the east a large wire netting to catch the ball. That canvas is to keep the outsiders out.

Isa Gratz. Am a merchant here, was at this game of base-ball last Sunday at half past one. Understand the game of base-ball. It is not called a game until there is five innings played. There are nine on each side each holding different positions. I don't know the umpire's name, he was a stranger to me. The nine white were on one side and

the negroes on the other. I was in a hack and handed somebody the money to hand to them. In the hack with me were eight. Before they were arrested one side had two innings and the other one. That was an inning and a half. These white boys were from Kansas City, they told me they were going to play Sunday. How many people were there? I would judge about four hundred; on the hillside about as many or probably more. The playing of the game of base-ball is not hard work. I consider it pleasure. The pitcher throws the ball until the man is out or has three strikes and is out. You keep up that work throwing the ball for nine innings. The catcher, his duties and work is to catch the ball the same time as the pitcher. The short-stop, his work and labor is to stop the ball and throw it and put the man out, and the first baseman has to act there in his position and the others have to handle their own position.

Cross-examined. To constitute the game five innings have to be played. They started in to play a game of base-ball and before they got through with the game they were arrested. The parties that were on the inside of the enclosure they were there to see the game; I went there to witness the game. We were not atttracted there by anything except the sport belonging to the game of baseball. When there was a play made by a party sometimes the friends of the party making the play would applaud the play; that is nothing unusual in the game of base-ball. When the opposite players would make a brilliant play or a play that struck the fancy of the crowd they would applaud. The people that were down there to witness that game of ball were there to witness the sport of the game were they not? Yes sir. You could not see any difference in the playing of the game as far as it went from any other game of base-ball? No, sir. Now that ground, Mr. Gratz, has been used for an indefinite number of years, has it not, as a baseball ground? I don't know. I have only been here a little over a year but ever since I have been here the last two summers it has. It is the unbroken custom to have an entrance fee paid for going into the grounds at a base-ball game. Attended a great many games up here at the Wentworth Academy; have umpired a great many of those games. This game was played outside of the limits of the city of Lexington and most all the people that were there witnessing that game were people from the city of Lexington. They could not see the game from their residences or the streets of Lexington. Don't know whether they understood the game or not.

James Good. Am a resident of Lexington. These boys were there playing this game and the sheriff and Oscar Thomas went down and arrested them. Do not know what the admission was; did not see any money paid to any one. The sheriff rode in at the lower gate and I went in at the upper gate. Saw Al Rouse, did not see any money; he had the grip, the other man Hayden, I did not see. I went out

that gate but I don't know who was there.

George Hagood. Live in Lexington; know the colored boys that played base-ball there last Sunday. They live here in Lexington; was present at the game last Sunday; saw them start to play, an inning and a half. Understood the money was to go to the winning club; that was what they were playing for, they were not playing for no division whatever. I got that all from outsiders; not any of the club were present when the outsiders told me, because I was on my way home some time after the arrest and I was in Old Town and I don't know where they were. They played an inning and a half before they were arrested.

The Prisoners' Counsel called no witnesses.

THE CHARGE OF THE COURT.

JUDGE RICH told the Jury that the only count in the information on which the evidence would sustain a verdict of guilty was the first count. But if you believe from the evidence that at any time within one year next before the filing of the information that any of the persons named in the information, at the county of Lafayette and State of Missouri, played at a game of baseball on Sunday, then you will find them guilty as charged in the first count of the indictment and assess their punishment at a fine not to exceed fifty dollars, and are further instructed that it is immaterial in this case how many innings had been played.

If upon the whole case you have a reasonable doubt of the guilt of any of them you will acquit such one, but to authorize an acquittal upon the ground of doubt alone it must be a reasonable or substantial doubt of guilt based upon and arising out of a consideration of all the evidence in the case, not a mere possibility that the defendant may be innocent. In order to convict, the state is not required to prove them guilty by direct and positive evidence, but if from all the facts and circumstances in evidence you believe them guilty under the instructions of the court then it is your duty to convict, even though the evidence be not positive and direct.

THE SPEECHES TO THE JURY.

Mr. Aull. Gentlemen: The Judge has told you that there has been no evidence presented to you to show that these defendants are guilty of any violation of the statute as to working on Sunday, so the only question for you to decide is whether playing a game of baseball an athletic game or sport is a crime under the laws of this state. And I am sure I shall be able to convince you that it is not. It cannot be a crime unless it is so by the common law or by some

state statute. Sunday laws as they are called go back a long way into history. The first I think was three hundred years after the birth of Christ when the Roman Emperor Constantine issued an edict which in those times made law that all work should cease on Sunday. Later the Roman Code prohibited the prosecution of law suits and all business on that day. Then when the Church became as powerful as any King it promulgated holding a law that pleas should not be made nor cases adjudged. These Church canons became part of the English Common law and every lawyer knows the legal maxim Dies Dominicus non est Juridicus, which in English is that the Lord's Day is not a day on which a legal Court can be held or legal proceedings begun. Now this is all that the Common Law ever prohibited on Sunday. It never prohibited work and labor on that day nor games either. Indeed as late as the Seventeenth century King James of England wrote a book advising his subjects what were the best games to play on that day.

But some years later the English Parliament passed a Sunday law making it a crime to work, labor or do business on Sunday. But this statute never extended to Missouri and to find what our laws prohibit on Sunday you must look at the words of the statute which has been read to you. Now the section that we are charged with violating simply prohibits horse racing, cockfighting or playing at cards or other games. Can anyone think that the Legislature ever intended to include an athletic sport like this? It could not, for base-ball had not been invented, there was no such game known when our lawmakers passed this law. And gentlemen our own Court of Appeals has recently decided that this section applies only to gambling games and games of a like nature and like harm to the public and that Athletic sports including this very game of base-ball is not within its intention. So you have here the highest authority for acquitting these young men of the charge laid against them. If their act was not a crime and has been so declared by one of our highest courts, then for you to find them guilty and sentence them to a fine would be to find a thing unlawful and punishable

which has been declared innocent by the law of the land as spoken through its judicial tribunals.

Mr. Vivion. Gentlemen: The contention of the defendant's counsel is that the words at the conclusion of the Statute "games of any kind," mean simply games of chance or games of demoralizing tendency, and not mere games of skill. The Statute in this case was intended to prevent a desecration of the Sabbath by prohibiting those things which are offensive to a christian community, *because done on a Sabbath day. The time* within which the act was done was clearly the point the law-maker aimed at. The whole context of the legislation shows that.

The two preceding sections relate to laws prohibiting the breaking of the Sabbath; so do the three succeeding sections, likewise relate to desecration of the Sabbath. This section was not aiming to prevent the doing of things immoral *per se,* or the tendency of which is immoral, as the inhibition is not against gambling or betting on the games, but merely against doing the act on that day, although it be not immoral or tending to immorality. Racing horses and playing cards on any other day of the week, in the absence of betting thereon, do not constitute an offense, and if the Statute had not been *leveled simply at the doing of these acts on Sunday* the law would have prevented horse racing or card playing or games of any kind on any day, Sunday or secular.

The counsel for defendants argue too, that base-ball is not included in the general words, "or games of any kind," and urge the familiar rule of construction that where particular words of a Statute are followed by general ones, the general words are restricted in meaning to objects of a like kind with those specified. But the Statute does not use the words, "and all others," but uses the words, "or games of any kind." The object of the rule of construction is not to defeat, but to ascertain and carry out the legislative intent, and if the application of the rule in its full strictness would be in the face of the evident meaning of the legislature, the rule will not be applied. In construing Statutes, penal, as well as others, an interpretation must never be adopted that

will defeat its own purposes if it will admit of any other reasonable construction.

The history of this Sunday law legislation in our State, and the plain intent of the General Assembly is unambiguous, and clearly evinces the intention to prohibit all classes of games on Sunday. It is true that the Sabbath was made for man and not man for the Sabbath; therefore, works of charity, mercy and necessity, not only can legally, but should be performed on that day. But, the Lord recognized the Sabbath as a day of rest, and after the death of Christ and his resurrection his disciples to commemorate that event changed the day to the first of the week, and that day is now observed by the great body of his followers throughout the world, and is recognized by both the common and Statute law. In this State the right of every one to worship God according to the dictates of his own conscience is recognized, but the law, both human and divine, being in favor of abstaining from games and sports on Sunday, is a reasonable requirement and should be enforced, and the deliberate violation of these Statutes against Sabbath breaking exerts an influence upon the participants therein that has a tendency to break down the moral sense and make them less law abiding citizens. In addition to this, every person has a right to the quiet and peace of a day of rest. Every citizen has also a right to the enforcement of a law so that the evil example of a defiance of the law shall not be set before his children. These are some of the reasons doubtless that actuated our General Assembly in enacting this law.

The *element of gambling* is not made an *ingredient of the offense or of the game by the terms of the Statute.* This Statute makes the playing of games unlawful, even *when unaccompanied* by betting, but limits the application of the Statute to a particular time, to wit: Sunday. Other Statutes make certain things an offense when perpetrated in a particular place that otherwise would not be an offense; for instance, one Section provides, "that if any person shall run, or cause to be run, upon any public road or highway in common use in this State, any horse or horses, so as to interrupt

travelers thereon, or put to fright the horses or other animals by them ridden or driven, he shall, upon conviction, be adjudged guilty of a misdemeanor," and another provides "that if two or more persons run their horses in a public road for the purpose of trying the speed of their animals, they shall be guilty of a misdeamor," and another provides "that any person shooting at an object or mark at random along or across a public highway shall be adjudged guilty of a misdeamor." These Statutes are directed at *particular acts performed in a particlar place and manner,* because the running of a horse by a rider, or the running of two horses by riders, or the shooting at a mark in any other place than those named in the Statute would be harmless. To restrict the words, "games of any kind," only to games of chance or those of a demoralizing tendency would be to annul the law instead of executing it, because the General Assembly did not intend to say that only the playing of games of chance or those of a demoralizing tendency should be a violation of the Statute.

Base ball is certainly a game. Webster defines base ball as "a game of ball so called from the bases or points, usually 4 in number, which designate the circuit which each player must make after striking the ball."

The decision Mr. Aull has told you about simply holds *that certain athletic sports are not included in the Statute in controversy.*

This Supreme Court of Missouri has never held, so far as I know, that *base ball playing* on Sunday, as it is now carried on, as a game of skill, and really as a business, is simply an athletic sport not prohibited by the Statute we are considering.

It might well be that certain athletic games and sports carried on so as not to disturb any citizen or citizens on Sunday, and without attracting public attention, and only for the benefit of the health, or for the pleasure of the participants, would be held to be not within the terms of the Statute. This is all I understand the above named case to hold. From the report of the case it does not *appear*

what character of games were played. It does not appear that base ball was one of the games.

"Game" is defined in Century Dictionary as "a contest for success or superiority in a trial of chance, skill or endurance, or of any two, or all three of these combined; as games of billiards, cards, dice or athletic games." The games of classical antiquity were chiefly public trials of athletic skill and endurance; as in throwing the discus, wrestling, boxing, leaping, running, *horse and chariot races,* etc., etc. "The four great Greek national games formed the strongest combine in the nature of a national union between the various independent Greek states." "At them, any person of Helenic blood, had the right to contest for the victory, the most highly esteemed honor in Greece; citizens in all states, however hostile, met in these games in peace."

Anderson's Law Dictionary says, "to play a game is to play at any sport or diversion, and the word "game" embraces every contrivance or institution intended to furnish sport, recreation or amusement."

The counsel says that the rule of construction, that general words will be limited in meaning and restricted to things of a like kind and nature with those specified, should be applied to this Statute, and therefore, applying that rule to the general words, "games of any kind," it would clearly appear that athletic games or sports are not included therein, but only games of chance, or games of a demoralizing tendency. The argument necessarily follows from this statement of counsel that *horse racing and playing at cards,* and cock fighting are games of chance, and of a demoralizing tendency. I am of the opinion that the mere playing of cards for amusement is, in itself, innocent, and I do not think the public will entirely subscribe to the proposition that the playing of cards *for amusement only, is demoralizing.* It is the betting upon a game of cards that makes it demoralizing.

We have seen from the definition given in the dictionary that horse and chariot racing was one of the ancient games of endurance, and that, along with wrestling, boxing, leaping, etc., constituted one of the classical games of antiquity, and

has been long recognized as one of the out-door sports and diversions of the human race; and base ball is, in my mind, a similar class of amusement.

I do not say that any athletic exercise, conducted in private, so as not to be a serious interruption to the repose of a community on Sunday, would be a violation of this Statute.

Sunday is the day appointed by the law-making power on which the ordinary business of life shall be suspended in order that thereby the physcial and moral well-being of the people may be advanced.

The object of Sunday legislation is to make Sunday a day of rest, and to prevent private citizens from being disturbed in their enjoyment of the day by others practicing their ordinary trades and pursuits, or indulging in disturbing or boisterous amusement. Our theory of Sunday is simply this, we prefer a day of rest in peace and quiet, free from the things and bustle of work and trade; when people can go to church without being disturbed, or can visit, or walk, or drive, or sail, or go to libraries and museums and picture galleries, and play with children, rather than a day of rum selling, horse racing, cock fighting, gambling, ball playing, prize fighting, theatre going and getting drunk.

I do not believe the object of the act in controversy is to protect those who can rest at their pleasure, but to afford rest to those who need it and those who, from the conditions of society, could not otherwise obtain it. It is manifest that the Statute is made to prevent those things which are a serious interruption to the repose of the community on Sunday, and naturally tend to disturb the quiet and rest of the citizen. I think this is manifest from the other section of the Statute relating to breaking of the Sabbath and desecration thereof.

THE VERDICT.

The *Jury* returned a verdict of guilty with a fine of $12.50 against all of the *Prisoners.*

Some of the convicted men paid their fines, but Neet refused to do so and was consequently imprisoned in default thereof. His counsel

appealed to Chief Justice Sherwood[6] of the Supreme Court who issued a writ of habeas corpus against the Sheriff of the County and on June 30, 1900 the Supreme Court ordered his discharge, holding that he and his associates had committed no offense. 137 Mo. 527.

That Tribunal said: "Playing a game of base ball on Sunday (or any other day) could not have been in the minds of the law-makers when this provision of law was enacted in 1835 for the very simple reason that such a game was wholly unknown to Art at that time.

The doctrine of *ejustem generis* is as rock-ribbed in the law of this state as any principle ever announced. As applied to penal statutes, especially, it is only a humane doctrine and accentuates the wisdom of the fathers when they objected to being punished for offenses by the law. It observes the respective rights of the different co-ordinate branches of the government by requiring the legislature to enact the laws—not even by construction. Baseball does not belong to the same class, kind, species or genus as horse-racing cockfighting or cardplaying. It is to America what cricket is to England. It is a sport or athletic exercise and is commonly called a game but it is not a gambling game or productive of immorality. In a qualified sense it is affected by chance but it is primarily and properly a game of science, or physical skill of trained endurance and of natural adaptibility to athletic skill. It is a game of chance only to the same extent that chance or luck may enter into anything man may do. But when chance or luck is pitted against science and skill, it is as fair an illustration of what will result as any test that could be applied. If the view of the prosecution was adopted that statute would be elastic enough to cover every game that ever was or ever will be invented, no matter whether it was harmless, promotive of physical or mental development or deleterious to both. It would prevent games of chess, backgammon, jacks, authors, proverbs, faro, keno and poker alike, and when played on Sunday by anyone would have been as illegal as any other. Such a construction would curtail many of the pleasures of many of our people without elevating them or improving their moral tone. Until the law-makers expressly provide for such sweeping changes in the lives and customs and habits of our people it is not proper for the courts, by construction to impair their natural rights to enjoy those sports or amusements that are neither *mala in se* nor *mala prohibita*—neither immoral nor hurtful to body or soul. We therefore conclude that there is no law in this state which prevents playing a game of baseball on Sunday and therefore the defendant is imprisoned for the doing of an act which is not unlawful and therefore the imprisonment is wrong."

[6] SHERWOOD, THOMAS ADIEL (1831-1918). Born Eatonton, Ga. Educated at Mercer Univ. Ga. and Shurtliff Coll., Ill. Removed to Missouri, 1852; Graduated Cincinnati Law School 1857; admitted to Mo. Bar 1857 and practiced at Springfield; Judge Supreme Court of Mo. 1872-1902; died at Long Beach, Cal. See Mo. Bar Ass'n. Reports, 1919.

THE TRIAL OF HENRY B. HAGERMAN FOR ASSAULT WITH INTENT TO MURDER, NEW YORK CITY, 1818.

THE NARRATIVE.

Mr. Henry B. Hagerman was a lawyer in New York City and Mr. William Coleman was the editor of an influential newspaper there. Something that the editor published in his paper about the lawyer angered him greatly, so one day he armed himself with a heavy whip and went in search of his enemy. He met him on the street and after knocking him down with the butt end of the whip proceeded to beat him into insensibility. Mr. Coleman was so badly hurt that he was confined to his room for several days, his life being at first in danger. A witness swore that when he gave the last blow Hagerman said; "Take that you damned rascal for publishing lies about me." Brought to trial for the attempt to murder Mr. Coleman, he, Hagerman, pleaded guilty to the assault but denied that he had any intention to kill. And the jury acquitted him on this charge, though he had to pay a fine of $250 and $4000 more which Mr. Coleman recovered against him in a civil suit for the same act.

THE TRIAL.[1]

In the Court of General Sessions: New York City, June, 1818.

HON. CADWALLADER D. COLDEN,[2] *Mayor.*

June 3.

Henry B. Hagerman was in April indicted by the Grand Jury on the first count for assault and battery on William

[1] New York City Recorder; see 1 Am. St. Tr. 61.
[2] See 1 Am. St. Tr. 6.

Coleman, committed on April 9, 1818. And on the second count with the same offense with intent, him, the said William Coleman, to kill and murder. The prisoner is a member of the New York Bar and his victim is the editor of a city newspaper.

He pleaded *Not Guilty.*

Ebenezer Griffin[3] and *W. M. Price*[4] for the People.

John Anthon,[5] *Robert Bogardus,*[6] *Pierre C. Van Wyck*[7] and *Peter J. Munro*[8] for the Prisoner.

On *April 30,* the prisoner was granted a continuance until May 7 on account of the absence of material witnesses.

On *May 7, Mr. Anthon* stated to the court that he was ready for trial, having procured a great number of witnesses; and moved that the prosecution proceed, or that he be discharged from his recognizance.

Mr. Price said that the prosecution was ready on the last day of the last term and the first day of this, and the defendant was not ready: The application on his behalf at

[3] See 1 Am. St. Tr. 790.
[4] See 5 Am. St. Tr. 360.
[5] See 2 Am. St. Tr. 787.
[6] See 1 Am. St. Tr. 718.
[7] See 10 Am. St. Tr. 567.
[8] MUNRO, PETER JAY (1767-1826). Born Rye, N. Y., 1767. Son of Rev. Henry Munro and Eve, only daughter of Peter Jay. His father was born in Scotland and was compelled to flee to England during the Revolution on account of his British sympathies. In 1780 he accompanied his distinguished uncle, John Jay, to Madrid, upon the appointment of the latter as United States minister to Spain. His previous education had also been under the direction of John Jay. During a residence of three years in Madrid and two in Paris he became proficient in the Spanish and French languages. Returning to New York City in 1784 he studied law with Aaron Burr, and after his admission he soon acquired a large practice, and with comparative rapidity won recognition as one of the leaders of the New York bar. He was a member of the constitutional convention of 1821, and chairman of its judiciary committee. [Also member New York Assembly, 1814-1815.] Receiving a severe stroke of paralysis in 1826 while in the discharge of professional duties, he retired to his country estate in Westchester County, where he lived until his death. See "History of Bench and Bar of New York," Vol. 1, New York, 1897.

this time, was novel and very extraordinary. The public prosecutor never could be forced to trial; and the defendant, even had he not moved to postpone the trial last term, would not be entitled to his present application until the last day of this.

THE RECORDER ordered the case be continued until May 14.

On May 14 the Recorder stated to the counsel, that by reason of the public duties of the mayor, out of court, the business, in both the mayor's court and sessions, had devolved on himself, and he had been on the bench three months. He was, therefore, much exhausted; insomuch, that he was certain he could not bear the fatigue of a long trial, as this would most probably be. This, with other reasons stated by him, rendered it impossible he should hear the cause that term. He would, therefore, postpone the trial until June 3d.

Mr. Munro moved, that the prisoner, on the first count of the indictment, be allowed to withdraw the plea of not guilty, and substitute its opposite. The motion was granted by the COURT.

A *Jury* was then empanelled and sworn.

MR. PRICE'S OPENING.

Mr. Price. The indictment charged the defendant with committing an assault and battery with intent to murder;—that by his plea of guilty to the count for an assault and battery, the inquiry of the jury was now to be directed only to the intent with which it was committed;—that the defendant was a young man, an inhabitant of this city, a lawyer by profession, and holding the office of judge advocate in the militia, by profession and station honorable.

The complainant was, and had been for eighteen years, editor of the Evening Post, a paper well known in this city and in this country. The witnesses, he stated, would prove, that the defendant attacked Mr. Coleman, in a most outrageous manner, in one of the public streets of our city; that he approached him, unaware of an attack; that with some deadly weapon, he knocked him down, and while he lay bleed-

ing in that situation, beat him until he was completely helpless; that his victim escaping for a while, retreated to the middle of the street, where the attack was again renewed; that the complainant then tottered to the opposite side of the way, but that the cruelty of his assailant was not yet appeased;—that pale, feeble, bleeding, he again escaped to the middle of the street, whither the defendant again pursued him, repeating the blows, until, after having satiated his vengeance on his exhausted and almost lifeless victim, he retired from the scene, boasting of the gallantry of his exploit.

That the intent, in all cases like the present, must of necessity be a legal inference from the circumstances; for the mighty malice which then rankled in the heart of the defendant, was known to omnipotence only.

It would appear from the testimony, that the commencement and progress of the attack were inhuman; and that the groans and the blood of the complainant, ought to have satisfied his assailant that he had endangered his life. By persisting, therefore, in his cruelty at such a time, he could not, on this occasion, escape the inference, that his intent was to murder. The defendant had, in a recent publication, attempted to justify his conduct, by alleging that Mr. Coleman had published a libel concerning him. But every word and letter of that alleged libel as counsel had been instructed to say would be proved strictly true.

THE MAYOR. It is questionable whether any evidence can be received as to that publication. Without declaring any opinion on the point I would prefer that no notice should be taken of such proof until I hear an argument as to the propriety of its admission. I will now produce the evidence and then call upon you as guardians of the public peace to pronounce whether the law is to retain its dominion in the community or unrestrained violence prevail among us.

THE WITNESSES FOR THE PEOPLE.

William Coleman. On ninth day of April last at about four in the afternoon I set out to go from my house at 30 Hudson St. to my office in Pine St. Went through Chapel St., turned

up Murray St., and was proceeding along that street towards Broadway. Crossed Church St., after which the first thing I was sensible of was that I found myself on the pavement on my hands and knees. It was like waking from a dream. Saw no person approach, and while in this situation neither saw nor felt anything. When recollection had come to me in some measure felt some person beating me with a club or loaded whip. Thought it was through some mistake and not being able to speak turned up my face that I might be known. Still felt the blows upon head and face upon which attempted to rise, but it was some time before my eyesight was sufficiently restored to enable me to see from whom the blows proceeded; discovered they were from Henry B. Hagerman. Believe that by repetition of the blows I became again for a moment disordered. After wards faint and bleeding saw the defendant a few yards distant, who returned once more and beat me over the head and eyes with the lash of a whip, until he appeared exhausted; when he left me saying something I did not understand. A mob soon collected and I was carried into the grocery of Mr. Stewart at the corner of Church and Murray Streets where I was revived by drinking some brandy and water, and attempts were made to stop the blood until medical aid could be obtained. Sent for Dr. Hosack who was not at home. Dr. Watts was called and Dr. Hosack soon after coming I was by them carried home in a hack; was bled very copiously and put to bed; was confined, having a fever, about three days. Previous to the attack had not seen Hagerman on that day or even for three years before and did not know he was in the street. There were nine wounds behind on the head and there in the face. At the commencement of the attack I neither heard nor saw defendant nor did I feel the blow which produced the fall. Besides there was a bruise on the thigh and bruises on the elbows which I suppose were caused by falling. These bruises were black and blue; the cuts on the face I think received from the lash of the whip when I was in the middle of the street.

Mr. Price. Mr. Coleman, had there been any quarrel between you or had there been any publication in your paper concerning Hagerman within a week previous to the attack?

The Mayor. Mr. Price, the court have already intimated that any testimony concerning any publication could not be received. You perceive that this question would open to the counsel for the defendant a large field for discussion. You had therefore better reserve the question at present.

A Juror. While you was in the middle of the street was you beaten with the lash-end of the whip? Yes, but I think that the wounds on the back of the head could not have been produced with the lash-end of the whip.

Mr. Price. Have you the hat which you wore at the time? I have. (He produced a hat which was nearly new with a large indentation on the left-hand side of the crown behind, as though a

heavy blow had crumpled it inwards.) It is of the American manufactory. I understand a hat of that description instead of being broken by a heavy blow like that of a foreign manufactory, would, like the one produced, give and not break.

Cross-examined. My mode of walking was generally with eyes directed to the pavement but think that I generally see three yards ahead in walking.

Benjamin Haight. On the afternoon of the affray was in a gig with another and while turning from Broadway to go down Murray Street cast my eyes down that street and saw nearly opposite to the house of Dirck Ten Broeck at the corner of Church and Murray St., one man beating another who appeared to me to be down. At first I knew neither of the parties; as I approached perceived one was Mr. Coleman, who rose and staggered over or inclined towards the middle of the street. Mr. Hagerman, who was at some short distance, came up and beat him again. He reeled over to the side of the street opposite that in which he was beaten while down, where he was beaten again by Mr. Hagerman, who then left him and retreated a few steps, when he returned and beat him again, and, on leaving him, and after inflicting the last blow, said, "Take that, you damned rascal, for publishing lies about me."

Did not perceive with which end of the whip the blows were inflicted in the first place; but in the middle of the street, and on its opposite side, the blows were given, with much severity, with the lash-end of the whip.

No by-stander interfered to interrupt Mr. Hagerman. At each of these several attacks, there was a complete separation between the parties, four or five feet. Mr. Coleman acted without intelligence, as if stunned, and made no resistance.

Mr. Munro inquired whether he supposed that Mr. Hagerman intended to murder Mr. Coleman.

Mr. Griffin objected because this was a matter of inference to be drawn by the jury from the facts.

THE MAYOR so decided, and the question was waived.

Cross-examined. I did not interfere because I did not consider there was occasion; regarded it as a common horse-whipping, except the blows were inflicted with much severity. Some of these were struck parallel with the ground, and some vertical; and the principal part were over the head and shoulders. The whip was a blue cowhide, and appeared to be of an ordinary size. While in the carriage, did not know that there were wounds on Mr. Coleman's head.

Cornelia Ten Broeck. Reside at the corner of Church and Murray streets; the afternoon of the affray was sitting at the east window of my house, and was roused by a groan from the street. Went to the window, which was shut, and saw a person lying on the pavement, whom I afterwards understood to be Mr. Coleman, the crown of whose head was cut open. Another person was beating him. Mr. Coleman appeared to be stunned, and turned his head and was attempting to rise—his head being towards the

witness. The blood was dropping from the back of his head on the pavement, and the same day I saw marks of the same on the pavement and in the area. The blows were given with as much force as they could be. Mr. Coleman appeared to be insensible; he finally rose and staggered into the middle of the street, where he was followed and beaten on his bare head the whole way by Mr. Hagerman, with as much force as he could strike. The crown of Mr. Coleman's head and his face were bloody when he rose, and Mr. Hagerman must have perceived it. Mr. Coleman made no resistance, being unable. Could not state how many blows were inflicted on Mr. Coleman while on the ground. Being much agitated, turned my head from the window and looked again and the blows were still continued.

THE MAYOR submitted to the counsel for the prosecution, whether, at present, a further examination of witnesses relative to the same point was not a waste of time. He considered the case as it stood, clear; but it was not his province to control.

Mr. Price. We wish to examine the attending physicians, to ascertain the nature and extent of the injury.

Dr. John Watts. Early in April last, was sent for to see Mr. Coleman, and found him at the grocery store spoken of. There were several wounds on the back of his head, one of which was a pretty large one. The scalp, at this place, was completely penetrated, and the wound was cut to the skull. Besides this, there were several other minor wounds, and some bruises. He had bled pretty freely. Dr. Hosack soon arrived, and by reason of the loss of blood, it was judged advisable not then to take more, but to carry the patient home; where, on his arrival, sixteen or seventeen ounces of blood was extracted. He remained two or three days in bed. I further required him to avoid conversation, and not to receive visitors. This advice and direction was given, by reason of the peculiarity of hurts, or disorders of the head.

Mr. Griffin. Dr. Watts, what would be the probable result of such a wound on the head? Wounds on the head are extremely dangerous; but, I should think it impossible to say what would be the result of such a wound, in such a place, without medical assistance.

Mr. Griffin. Is not a blow on the head, which would have produced such a wound, calculated to produce death? This would depend on the instrument used; if stiff and unyielding, it might have produced a concussion of the brain; but if elastic, it would inflict only a flesh-wound. The result of my opinion, at the time of the examination, was, and I still think, that the blow by which the principal wound was inflicted, was calculated to produce death; especially from the delicate state of the patient's health. There were several wounds and bruises on his face, one being on his nose, and the

other on his lip, which was cut entirely through.

Am unable to say how long the patient was confined to his house; but the physicians did not consider him out of danger in three days. There was a spitting of blood; but whether from the wound on the lip, or from the lungs, do not know. Judged the violence sufficient to have produced a spitting of blood from the lungs.

At the time of the first examination of the principal wound on the back of the head, I also examined the hat, and found the place of its indentation correspond with that wound; my opinion at the time, founded on such examination, was, that the blows on the back of the head were inflicted with a club, or a cane, or the butt end of a loaded whip. Do not believe the butt end of a cowskin could have inflicted the blow. The scalp, or even the skull, might be broken by a blow on a hat, which, if made of good stuff, might remain unbroken.

Dr. David Hosack (testified to the same facts, in relation to his being called to visit Mr. Coleman, to his condition in respect to the injury, and to the treatment of the wounds inflicted, as were stated by Dr. Watts.) Have been the family physician of Mr. Coleman a number of years; although his appearance indicates health, yet, he is a man of a feeble constitution, and subject to spitting blood. Thought it best to open the scalp on the bruises on the head, and discharge the blood; but, on consideration, that course was not pursued.

Powerful depleting remedies were applied. Considered the wounds inflicted calculated to produce death, especially from the predisposition of the patient; and such a beating might even in a healthy person, have produced death; but, with proper medical treatment towards such person, do not consider it probable that this effect would have ensued. Coincide in opinion with Dr. Watts that the principal wound could not have been inflicted with the butt end of a cow-hide, think that it must have been done with a heavier instrument. The patient was confined at home ten days.

Cross-examined. I enjoined my patient to be kept quiet; he could not have written a letter on the following day although from the remedies applied, Mr. Coleman had a temporary relief. I considered there were symptoms of danger.

THE COURT. Might not the smaller wounds and bruises on the head have been produced from blows given with a cowskin? I thought not and that is my opinion still. From the size and situation of the wounds and bruises on the head I believed they were inflicted with a cane. The cut on the lip I believed to have been made with the lash-end of a whip.

Dr. Watts (recalled). I coincide with Dr. Hosack in his opinion that the wound on the lip was inflicted with a whip and not with a blow from the fist; for having particularly examined the wound with the view of forming an opinion I found that the cut was clear and not bruised on or near the inside of the lip, next the teeth, as it would have been had a blow from the fist have produced the wound.

THE DEFENSE.

Mr. Anthon. Instead of using recriminatory language towards the prosecutor, I will on this occasion, appeal to your sound judgment. By his plea the defendant admitted a simple assault and battery which his counsel are not prepared to justify. The only question therefore for the determination of the jury, is whether there was an intent to murder. Though the court has very properly excluded all testimony in relation to a publication, yet sufficient evidence has arisen on behalf of the prosecution to show what was the motive which led to the attack. The reason was disclosed at the time, for according to Haight's testimony, the defendant said at the time of the chastisement, "Take that for publishing lies about me". Even with this testimony the defendant might safely appeal to the jury on the question of intent. We shall however produce witnesses who saw the affray from the commencement. We shall show conclusively that he came up at the distance of one hundred and fifty feet directly in front of Mr. Coleman, struck him with the fist in his face and he then suddenly fell down and struck the back of his head against a railing on or near the sidewalk, which fall produced the injury described by the witnesses. He rose and as counsel are instructed to say, made battle with Mr. Hagerman, who retreated into the middle of the street, and blows from a small cowskin were continued and repeated with considerable severity. This account of the transaction we believe the jury would find coincident with the relation of Mr. Haight and Mrs. Ten Broeck, and the circumstance of the blood in the area shows that the wound was inflicted by the fall against the railing. The jury in forming a conclusion as to the intent are to judge not from a probable event but from pre-existent circumstances. Hagerman openly and in front, attacked the prosecutor in the public street in the middle of the day and with a small cowskin. These prominent facts, some of which are about to be established we hope will be kept in view by the jury in determining whether the defendant harbored an intent to commit murder. We admit there was a violent assault and battery but deny the intent attempted to be fastened on him by the prosecutor.

Gilbert Haviland. Reside in this city; am a cartman. Saw the affray spoken of by the other witnesses. Stood on my cart and rode along Church Street in company with James H. Hawes who was on his cart a short distance before me and just as I was turning round the corner of that street to go down Murray street towards the river, on turning my head up the street, I saw Mr. Hagerman coming down, and as he got nearly opposite, and being in front of Mr. Coleman, he said something like, "You damn'd rascal," and hit Mr. Coleman, with the fist, on the right side of his face, who immediately fell with the back of his head against the railing. His hat flew off when the blow was giv-

en, and as he rose, Mr. Hagerman took from under his coat a cowhide, and struck him a number of blows over the head and shoulders; how many I cannot say.

Mr. Coleman appeared to be stunned with the fall, and appeared like a drunken man, my first impression was that he was some drunkard who deserved a whipping; and this was the reason I did not interfere.

After Mr. Coleman rose he staggered towards the defendant, and said something which I did not hear; to which Hagerman said, "What is that you say, you damn'd rascal?" and then beat him again.

Hagerman struck all the blows with the lash-end of the whip, at a distance, as if he was afraid Mr. Coleman would take hold of him. I saw all the blows, and none were struck except with the fist, the hand, and the small end of the whip.

This was on Saturday—and on the next day I received a note from Mr. Coleman, and, in consequence thereof, on Monday I called on him and found him sitting in his easy-chair, and he appeared to be better. He asked me a few questions, and, having answered, I left him.

The note is here:

"*Sunday Morning.*

"Sir—You would confer a great favor on a stranger, by calling at No. 30 Hudson-street, with your friend Hawes.

Yours, &c.

(Signed) William Coleman."

Cross-examined. Previous to the time of calling on Mr. Coleman neither Mr. Hagerman nor any other person had called on me on the subject of my knowledge concerning the affray, but the next week, defendant with two other persons did call on me and conversed with me concerning the affair. When I first saw Hagerman coming down Murray street he was above the livery stable of John Curtis which is on the right hand side of the street in coming from Broadway. At the time the attack commenced I was riding very slow round the corner of Church and Murray streets and at about the distance of sixty or seventy feet from the parties. Hawes was just before me to whom I observed that the assailant would cut out the eyes of the other. The blow with the fist which felled Mr. Coleman was an underblow or one in an horizontal direction, given on the right side of the face, though upwards, and as he fell suddenly backwards he turned or curled around. Do not know how many blows were struck with the whip. There is one circumstance I forgot to mention. I was mistaken in saying that before I went to Mr. Coleman, no person had called on me on the subject of my knowledge concerning this affair. Shortly after the affray took place Mr. Maxwell came to my house to know the truth of the matter.

James H. Hawes. Saw a part of the affray. As I was coming round Church into Murray street the first thing I saw was a man falling and another beating him. The person attacked fell partly with his head and shoulders against the railing, and as he fell doubled up, his head being down the street. The assailant struck with no other

weapon that I saw but the end of a cowskin. At the time I first saw the affray I thought the one attacked was some black man. In five or six days afterwards saw Mr. Coleman and we conversed on the subject.

Francis Alsfeldt. Mr. John Hunter and myself were coming up Murray street from the river on the left-hand side of the street and saw a man on the pavement and another beating him with the small end of a cowskin. Observed the person who lay down, rise up and stagger like a drunken man. I said to Hunter, "See there is a drunken man". When I first saw the one who was down, at the distance of twenty of thirty steps, his head lay against the railing. Did not interfere because I was a stranger and did not know the laws of the place.

Augustus Gumbold. My house is the next door to that opposite which the attack commenced. Came to door and saw Hagerman beating Mr. Coleman, who was bloody, with the small end of a cowskin. No person interfered and the reason I did not was that Hagerman did not appear to be in a passion. Did not see anything in the conduct of the assailant that indicated an intention to commit murder.

Dr. Felix Pascalis. Seven or eight days after the accident saw Mr. Coleman at his house in bed and he then appeared to be getting better. A blow on the head may produce a fracture of the skull, a compression or a concussion of the brain, and those were the only injuries arising from a blow on that part of the body, endangering life; could not say, that a blow like that inflicted on the back part of Mr. Coleman's head, as described by the other witnesses, was, generally speaking, calculated to produce death.

Dr. Stephen D. Beekman. The wound on the lip, as described by the other physicians, might have been produced by a blow from the fist, or from the small end of a whip.

Cross-examined. A more correct opinion could be formed concerning the kind of instrument by which a wound was inflicted, at its inception, than at any subsequent period.

IN REBUTTAL.

William Coleman (recalled). Eight days after I was hurt I wrote the note to Haviland who called at my house and in the course of the conversation said that Hagerman with two other persons had been at his house and spent an evening and that Maxwell had also been there. Haviland during his conversation, said that Hagerman with two other persons had been at his house and spent an evening and that Maxwell had also been there. Haviland during this conversation also said that Hagerman struck me on the left side of the face. I inquired of him how it was possible that Hagerman should strike on the left-hand side of the face (that being next the railing) in such manner as to have brought the right-hand side of the back of the head against the same railing. To this inquiry he gave

little answer. Saw the police magistrates on the subject on Saturday next after the attack. Have heard that the character of Haviland is bad. Have brought a civil action against the defendant.

Mr. Price. Do you think it possible that the defendant could have come in front and struck you without your perceiving him? I do not think it possible, for there was no mark of a blow on his face.

David Rogers, Balthazar P. Melick, Edgar Lang, John Van Bussum and *Simon Martyne* testified that the general character of Gilbert Haviland for truth and veracity is bad. The first named had known him for ten or fifteen years. He had for several years been engaged in business in his line, for the firm of Melick and Rogers, who by reason of some particular conduct on his part, an account of which the court excluded, discharged him from their employ.

Dr. Hosack (recalled). Did not think that any blow given in Mr. Coleman's face, which produced the wounds there could have brought him to the ground, there was no mark of a fist on his face; nor do I believe that the principal wound on the head was the result of a fall, but, evidently, of a blow. He examined the wounds and bruises on the head, with the view of ascertaining how they were inflicted, and found the principal one of a longitudinal form, which he does not think could have been produced by a stone.

Also examined the railing and do not think it possible that the wound on the head could have been occasioned by falling thereon; nor do not recollect whether their sharp edges were opposite the street.

Dr. Watts (recalled). I coincided with the last witness, in the opinion that the wound was not occasioned by falling against the railing. The reasons,—1. That had Mr. Coleman fallen against the railing with sufficient force to have produced the wound, the additional violence which the head must have sustained when it struck the pavement, must have been much greater than it actually was. 2. The principal wound was too near the top of the head to be produced by falling backwards against the railing; that is, he must have fallen in a measure head foremost to have produced such a wound.

Dr. John W. Francis. Am professor of medical jurisprudence in the University of New York, saw Mr. Coleman and examined his wounds, on the Monday evening after the attack; and believed them calculated to endanger life. There were five or six ridges on the back of the head, running in a longitudinal direction, parallel with each other, and the principal wound extended to the skull bone.—No mark of a fist was perceptible on the face. Did not believe that the wounds could have been caused by a fall; and having since examined the railings, do not think they could have produced the effect which appeared on the head, though the large wound might have been produced by a fall against the railings.

Dr. Hosack (recalled). Had examined the railings, and found them too old and decayed to

have occasioned the wound; in addition to the principal wound, the bruises were too numerous, and in such situations on the head that they could not have been occasioned by the fall.

Joseph Desboues. A short time before the attack, from the window of my office, No. 7 Murray street, observed Mr. Hagerman going down from Broadway, on the righthand side of the street. He stopped a few minutes and talked with a young gentleman behind a carriage which stood below Curtis' livery stable. After the affray heard Mr. Hagerman say, "This is the way I chastise editors."

John Huther. On the afternoon of the attack, was coming up Murray-street, in company with Francis Alsfeldt, before sworn, who said "See there is a drunken man." When Mr. Coleman rose, Mr. Hagerman beat him with the cow-hide; and, when in the middle of the street, he returned a second time and beat him, saying, "That is for putting me in the papers."

Mr. Price. We think proper, on the part of the prosecution, to offer the defendant, if he will produce, from the columns of the Evening Post, the publication alleged by him to be the occasion of the attack, to prove every word strictly true, or abandon the prosecution.

The Mayor. Mr. Price, my impression on this subject, which was intimated in an early stage of this cause, is, that this testimony cannot properly be received. The question came up, recently, before Judge Patterson, in a trial before the circuit court of the United States; and he decided that such testimony was improper. For myself, I do not feel disposed to travel one step beyond this affray.

THE DEFENSE AGAIN.

Dr. William J. McNeven. Have seen the railings; their sharp edges were towards the street; believe they were strong enough to occasion the injury sustained.

Dr. John Nelson. Have just returned from examining the railings, which I believed strong enough to kill a man, should the back part of his head strike with sufficient force against them.

Recently examined the scar where the principal wound was inflicted. It is my opinion that this wound was too high on the head to have been occasioned by a fall against those railings unless the head by the blow on the face, had been knocked upwards. A doctor who had examined a wound in its recent state was far more competent to form a correct judgment relative to the weapon with which the wound was inflicted, than one who saw it afterwards, or at a period when its scar only was left. It is difficult to account for this principal wound on the head, on the supposition that Mr. Coleman was struck in the face and knocked down.

Nathaniel W. Strong, Abraham Stagg, Isaac Kip, Joseph P. Simpson, Benjamin Stagg, William Stone, Jacob Hayes, John James, Alexander Denister, John Murphy, William Dodge, William H. Ireland, John Cornell, a mar-

shal and *Benjamin Ferris*, clerk of the mayor's court, severally testified to the general good character of Gilbert Haviland. The principal part of these witnesses had known him from ten to twenty years and many of them stated that they would place as full reliance on his testimony in a court of justice as on that of any other man in society.

Haviland (recalled). In the conversation which I had with Mr. Coleman at his house, I told him expressly that the blow which felled him, was given on the right side of his face. During the conference Mr. Coleman claimed relationship with me, alleging that his (Coleman's) wife whose maiden name was Haviland, was a cousin of mine. Some things which took place at the time of the affray, Mr. Coleman related and others he said he did not remember.

Mr. Coleman. Recollect yourself. You are wrong.

Mr. Griffin directed the attention of the opposite counsel to a principle of law on which the prosecution relied, as laid down by his honor the late mayor of this city in the case of Henry O'Blenis tried in this court in the term of July 1816. The principle was that where in an affray the instrument or means employed by the wrong-doer were calculated to produce death and where, had it ensued, such killing would have been murder, there the jury may presume or infer an intent to kill, though express malice be not shown.

The Mayor. There is no doubt but that this was the law. I request the counsel to read the case.

Mr. Griffin. The facts in that case were briefly these: O'Blenis, the prisoner, commenced a quarrel with and struck Clement Haines, who, in the act of defending himself knocked the prisoner down. Recovering, he procured a part of a board with which he commenced another attack on Haines, who wrested it away, and again threw him down. He rose, retreated a few steps, stripped himself, came at the prosecutor and made a pass at him with a knife and stabbed him. Price, for the prisoner, contended, that there was no proof of felonious intent; but the late mayor, in his charge to the jury laid down the principle that where a man who is a wrong-doer from the commencement makes use of a knife or other dangerous weapon in inflicting a wound, and where if death ensued it would be murder, either under the statute of stabbing or at common law, the jury might presume an intent to kill, though no express proof of that intent was produced. The prisoner was convicted and imprisoned.

Abraham W. Groesbeck. Was going down Murray-street, and, at about the distance of one hundred feet, saw the commencement of the affray. In the first place, Mr. Hagerman came up directly in front of Mr. Coleman, and struck him with the fist in his face, and knocked him down. —He reeled and fell backwards with his head against the railing. Defendant then drew from under his coat a common cow-skin, and struck Mr. Coleman eight or ten blows with the lash end of the whip. He stopped

beating him, and Mr. Coleman rose and stood with his back against the railing, when the defendant beat him again. From this place he went towards the defendant into the middle of the street, and, while standing there, the defendant attacked him again. Mr. Coleman, in a stupefied manner, said, "Why, why, what have I done?" or something to that purpose; to which Mr. Hagerman said, "I will learn you to slander me in the public papers." Mr. Coleman then uttered some inarticulate sounds like "Oh! Ho! Oh!——" and appeared stupefied. During this time the defendant was striking him with the whip.

Mr. Griffin. Had you seen Hagerman before this attack on that day? That question I don't wish to answer.

The Mayor. I think you are bound to answer that question, it is not improper. I did see Mr. Hagerman before the affray and on the same day.

Mr. Griffin. Had you any conversation with him concerning the atttack on Mr. Coleman before it was made? I don't think proper to answer that question.

The Mayor. Mr. Groesbeck, you must answer or suffer the consequence. The court will take care that no improper questions are put by the counsel.

Mr. Groesbeck. I think that an answer to this question will have a tendency of criminating myself.

THE COURT. No such effect could follow; proceed.

Mr. Groesbeck. Had a conversation with Mr. Hagerman two or three days before the affray and he said that he intended to chastise and disgrace Mr. Coleman. The occurrence took place at about five o'clock in the afternoon; about a half hour before which time at my store, I saw Mr. Hagerman, who from that place went down Murray St.

Mr. Griffin. Did you accompany Hagerman from your store into Murray St.? I went down Murray St.

Why at that time did you go down Murray St.?

THE COURT. We think that the witness may refuse to answer that question. Whether so designed or not, an answer may clearly have a tendency of criminating himself. (To the witness.) You may either answer that question or refuse to answer it, as you think proper.

Mr. Groesbeck. I shall decline answering.

Mr. Griffin. Did you see Hagerman standing behind the carriage previous to the attack? I did so; the carriage stood about one hundred feet from Broadway and the defendant went behind the carriage to let Coleman come up Murray St. Mr. Coleman came up Murray St. towards Broadway, until he came opposite Dr. Mason's church, when the defendant went behind the carriage. Mr. Coleman was below Church St. when the defendant went from behind the carriage to meet him. He was struck in the face by Mr. Hagerman but on which side I could not state as I was at that time at too great a distance. For two or three days before the attack, Mr. Hagerman was searching for Mr. Coleman, for the purpose of chastising him. At the time of the attack Mr. Hagerman had nothing, to my knowledge, about him except a com-

mon cowskin and I have no reason to believe otherwise. Saw the whole affair from its commencement until its termination. Previous to the attack, and while in Murray-street, did not see Mr. Hagerman stoop down.

Ephraim Conrad. Was one of the grand jurors in this court in April last, and with others of that body, waited on Mr. Coleman at his house; who, on being asked by the jurors what reason he had for believing Mr. Hagerman intended to kill him, answered, that Mr. Hagerman came up to him the second time; this being the only reason given.

Mr. Van Wycke contended that it did not follow, that because, in this case, had death ensued, the killing would have been murder, that, therefore, a presumption of an intent to commit murder could be legally raised. He instanced the case of a riot, in which several might be engaged, and death to one or more persons might be the result: though this might be murder, inasmuch as the perpetrators were engaged unlawfully, yet, if death did not ensue, no intent to kill could be inferred. In addition to the fact, that the perpetrator is a wrong doer, or that he is engaged in an unlawful act or business at the time of the killing, it must be further shown, that he either used a dangerous or unlawful instrument, or employed means necessarily calculated to produce death. Such was the meaning and spirit of the case relied on by the counsel for the prosecution. There the instrument was a knife; here a common cowskin.

That Mr. Hagerman attacked from behind, with an unlawful weapon, as was stated in the opening, is not shown by a single witness, and is expressly disproved by the testimony on his behalf. Upon those grounds, public opinion had been formed, and public prejudices excited by public statements from a press conducted by the prosecutor himself. But on this occasion, those grounds had utterly failed; and the jury were to judge of the *intent,* and of *that* only, from the facts before them.

From those facts, in connection with the time and manner of the attack, an intent to kill could not, rationally, be drawn by the jury.

Had the defendant harbored a design to kill, he would have attacked in secret, and with a deadly weapon, and not in

the streets of a populous city, in the middle of the day, and with an ordinary cowskin. Or, if even that design had arisen in his mind at the time of the affray, having his adversary in his power, he would have jumped upon him, and, at least, have endeavored to consummate his intent. But he inflicted a chastisement, severe it is true, with an instrument not unlawful, and then, voluntarily, left the prosecutor.

Mr. Price contended that the facts in the case would fully justify the inference that the defendant intended to kill.—Though it had not been directly proved that he attacked the prosecutor from behind, and with a deadly weapon, yet the facts and circumstances, produced on behalf of the prosecution, fully justified the conclusion: and even admitting that the commencement of the attack was in the mode described by the opposite counsel, still, the inhumanity of the defendant, during the attack, was sufficient to fasten on him the intention to kill. Whether he made use of *an unlawful weapon* was wholly immaterial, provided *that the means employed* were calculated to endanger life.

The principal circumstances in this case, as affording evidence of this intention, may be classed under four distinct heads: 1. The design of the attack was premeditated several days before it occurred. 2. There was a disparity in age between Mr. Coleman and the defendant. The former was weak and feeble; the latter young and athletic. 3. The lying in wait for his adversary, and, 4. The attack from behind.

THE MAYOR. Gentlemen, whatever may have been the excitement of the parties immediately interested in this cause, or of the numerous auditors who have crowded the court room during the trial, I trust that the court and jury will be able to discharge the duties of their respective stations free from any prejudices, partiality or bias. I feel a confidence that the jurors will not be influenced in their determination by any extraneous matters.

It would be the duty of the jury to lay the publication, stated by the counsel as having given rise to this controversy, entirely out of view.

The counsel for the prosecution have placed this case on a wrong ground.—They have treated it as though a personal wrong, to an individual, was to be redressed; but the jury will bear in mind, that this court is not constituted for the purpose of remunerating for any injury a witness may have sustained.—Here, the redress of public wrongs is the only legitimate object on behalf of the prosecution.

The defendant is indicted for a simple assault and battery, and is charged in the two last counts of the indictment, with the same offense, coupled with an intent to commit murder.

The assault and battery is admitted; and the principal question in the case for the jury to determine is, whether he intended to commit murder.

There are two species of intent recognized by the law, as applicable to this case:

1. The intent may be premeditated or actual, as in a case where threats or menaces are used previous to the commission of an offense.

2. There may be a constructive or presumptive intent; as, where the evidence of an actual intent is wanting, but some means are employed in the commission of an offense from which the intent may be rationally drawn. This kind of intent is always a matter of inference for the jury.

In this case, there is no evidence of a premeditated intent to commit murder; and if we are to rely on the testimony of Mr. Groesbeck, as evidence of an actual intent, the contrary appears; for it is expressly proved by that witness, that the defendant declared that his design was that of chastising and disgracing the prosecutor.

Independent of this testimony, which is positive, there is not only the want of evidence of a premeditated design to kill, but there are other important features or circumstances in the case, which go far in evincing that the defendant did not harbor this design previous to this attack. He armed himself with a common cowskin, and made the attack in the day time in one of the streets of our city.

In the opinion of the court, should the verdict in this case

depend upon the actual intent, the jury could not rightfully find the defendant guilty.

But. as the court has already stated, there is, in the law, a constructive intent to be inferred by the jury from the facts and circumstances in the case: As, where a man, in an attack, makes use of means which, in all human probability, might have produced death,—where he arms himself with a pistol, a sword or a knife, and commences an attack and inflicts a wound calculated to endanger life, there the intent to kill shall be inferred. And this is the principle of the case, decided in this court, read from the book and relied on by the counsel for the prosecution.

Let us, in the case before us, recur to the means employed by the defendant in this attack: It is not insisted by the counsel for the prosecution, that if the defendant had used a cowskin, merely, in an ordinary manner, that this would have afforded evidence of an intent to commit murder. Aware of this, they have endeavored to infer from the evidence produced that a stone or some dangerous weapon was used by the defendant in the commencement of this attack. How far the facts and circumstances in the case will warrant this inference, are matters solely within the province of the jury.

But it is further contended, on behalf of the prosecution, that even admitting that the defendant employed no dangerous weapon, still, the means employed in this attack with the whip, afford a presumption of an intent to kill.

It is said on this branch of the subject, that, as the prosecutor was of delicate health and was weak and feeble, that such an attack was peculiarly calculated to endanger his life: but the court is unable to perceive how this consideration can affect the question, for there is no evidence in the case that the defendant knew the constitution of the prosecutor, or the state of his health.

But it is further insisted, on behalf of the prosecution, that the facts in the case will warrant the inference that the defendant made the attack with the butt end of a whip; and that the inhumanity of his conduct, during this affray, shows that he intended to commit murder.

Admitting that the defendant did strike with the butt end of the whip, this circumstance, in itself, would not afford evidence of an intent to kill. But the jury in determining this point, (should they consider it important in enabling them to arrive at the intent,) by recurring to the testimony on behalf of the defendant, to which the court will presently direct their attention, will find that the lash end of the whip only was used during this attack.

The court, however, will not say that blows inflicted even with the small end of a whip, under some circumstances, would not evince a determination to kill. For if the party should inflict blows with such an instrument for that length of time, and with that unexampled severity, as to demonstrate his inhumanity and utter want of feeling, the jury might, under a view of all the circumstances, presume such determination. And if in this case the facts will warrant such presumption, the jury ought to find the defendant guilty of the charge in the two last counts of this indictment.

But as it is an important question in this case, whether the prosecutor was struck from behind, it is necessary, for the purpose of forming a correct determination, to advert to the testimony.

On this subject we have the positive testimony of Gilbert Haviland, who testifies that the attack was made in front with the fist; and if this witness is to be believed, the prosecutor, during the continuance of the attack, was not injured by the butt end of the whip. This witness is not contradicted by any positive testimony, and, considering that no witness on behalf of the prosecution saw the commencement of the attack, it was impossible that he should be. But it is said that a combination of circumstances in this case, produced on behalf of the prosecution, afford a contradiction to his statement; and the testimony of the attending physicians is referred to for that purpose. These witnesses testify, that they examined the wounds on the back of the head, soon after they were inflicted; and it is their opinion, that they were not occasioned by the fall against the railings. They also state, that there was no mark of a blow on the face which

could have occasioned the fall. Haviland testifies that the prosecutor fell with the back of his head against the railing.

On this subject there is some contradiction between the physicians. Dr. Hosack states that it is impossible that the wound on the back of the head should be produced by falling against the railing: for having examined it he found it incompetent to have produced them; and that the number and situation of those wounds could not have been the effect of a fall.

Dr. Watts does not think that the wounds on the head resulted from a fall; and his reasons for that opinion are, that the principal wound was too high on the crown of the head; and that had the prosecutor fallen back on the railings with sufficient force to have produced that wound, the additional injury on the head must have been greater than it actually was.

Dr. Francis on this point states, that this wound might have been occasioned by a fall against the railings; and Dr. Nelson testified, that the principal wound, though too high on the head to be the result of a fall, that this effect might, nevertheless, be produced, if the head, by the blow on the face, were struck upwards.

As the statement of Haviland, if to be relied on, is important, it is necessary that we should direct our attention to the testimony for and against his general good character. There is something in the general appearance and manner of a witness, examined in a court of justice, calculated to impress the mind with the character of his testimony, and I must say, that I believed the general appearance of this witness evinced an intention to speak the truth.

It is insisted, however, on behalf of the prosecution, that this witness is impeached by the positive testimony of a number of others; and that the opposite testimony on this point is of a negative character. But in the view of the court this testimony in support of his character is positive; and, to say the least, this conflicting testimony is balanced.

His testimony is corroborated by Haws, an unimpeached witness, who, though he did not see the commencement of the

attack, yet he saw the prosecutor falling with the back of his head against the railing, and the defendant afterwards beating him with the small end of the cowskin.

This account of the transaction is confirmed by Abraham Groesbeck, who testifies that he saw the whole affair from the commencement. It is said with regard to this witness, that his general appearance, his manner and his conduct on this occasion, have a tendency of attaching discredit to his whole statement, and that it is not entitled to belief. It is true, it may justly be said, that he has not behaved with that decorum which ought to be observed by every witness in a court of justice. But it should be considered that he may have been apprised, previous to his examination, that if he related any matter disclosed to him in confidence by the defendant concerning the intended attack, it might have a tendency of criminating himself; and to this erroneous impression, if it existed, his conduct as a witness may be fairly imputed.

The testimony of this witness is not contradicted, and if it is to be relied on by the jury, there can remain no doubt but that the prosecutor was attacked in front, and that the attack was continued with the small end of the cowskin. If then the jury should be satisfied that this account of the attack, as given by these witnesses on the part of the defendant, is correct, the court is at a loss to know how this presumptive intent to kill can be rationally inferred either from the means employed or from the mode of inflicting the blows. It is true, the defendant has been guilty of an aggravated assault and battery, but the evidence in the view of the court, does not establish either an actual or an implied intent to commit murder. The court on this occasion would have discharged its duty by merely laying down the law as applicable to the case, and by adverting this distinction between a premeditated and a presumptive intent; but in a case involving so great a variety of facts and circumstances, it was deemed useful by the court to recur to the testimony in the case with some particularity.

THE VERDICT.

The jury retired at about half after one in the morning and in about ten minutes returned, by their foreman, Henry Eckford, a verdict in these words:

We find the defendant guilty of an assault and battery of the highest degree, but not with intent to kill.

June 29.

Mr. Price. An affidavit on behalf of the defendant, in extenuation of his offense, having been delivered to the court, on behalf of the prosecution, we move the court for the inspection of those affidavits, for the purpose of framing counter-affidavits in aggravation.

Mr. Bogardus. As the object of affidavits in extenuation, was merely for the information of the court, the opposite party has no right to their inspection, nor a right to file counter-affidavits, unless the court, for further information, request him to do so.

The Mayor was not conversant with the practice in such cases and requested the counsel to refer to the authorities on the subject, and exhibit them to the court. The then present impression of the court was that the affidavits offered should be received.

Mr. Price cited to the court a passage from 1 Chitty's Criminal Law, page 693, for the purpose of showing that the practice in the courts in England was, that the prosecution had a right to read affidavits in aggravation and the defendant in mitagation. That each party must come prepared with affidavits disclosing all the circumstances of the case; that the affidavits in mitigation are first read, then the prosecutor's in aggravation, and then the defendant's counsel are to address the court in mitigation. That both parties are to have their affidavits prepared for inspection in the first instance, because the court will not, in general, receive the statement of one party first, and then admit the other to answer it, as that practice would be a perpetual temptation to perjury.

Mr. Bogardus admitted that such was the practice in England but not in this court, and he offered to withdraw the affidavits for a short time, until after having consulted with his associate counsel, he should have an opportunity of determining what course to pursue.

THE COURT said if he withdrew those affidavits they would not again be received. The court preferred that the question should lie over until the following day when the point of practice in relation to affidavits in mitigation would be settled.

The Counsel for the Defendant asked permission of the court to withdraw those affidavits, and leave was granted.

June 30.

The Mayor said that affidavits had been presented to the court in this case, both on the part of the defendant and of the prosecution. Those on the part of the defendant he has asked and the court have granted him permission to withdraw them. Some difference of opin-

ion having been expressed by the gentlemen of the bar, as to what is, or ought to be the practice in relation to the exhibition of affidavits of this nature, the court avail themselves of the present opportunity of expressing their opinions on this subject. It would seem, that a defendant has a right to submit affidavits in mitigation of the punishment in all cases of this nature; and where such affidavits are submitted on the part of the defendant, the court will receive affidavits on the part of the prosecution, but the prosecutor has no right to demand the reading of the defendant's affidavits to enable him to prepare others on his side.

If in the affidavits on the one side or the other, it should appear to the court that there are points which it would be proper to call on the party making the affidavit, or the opposite party, to explain, the court may hand back the affidavits, with directions which will confine the parties to these particular points. In this way the parties will be under the control of the court, and that endless war of affidavits and temptation to perjury, which an interchange of affidavits would invite, will be guarded against.

The court will not say that they will in no case receive an affidavit on the part of the prosecution, where none has been offered on the part of the defendant. But it must be some very extraordinary circumstance, and such as cannot now be anticipated, which would induce the court, after a trial and verdict, to receive an affidavit on the part of the prosecution, where none is presented on the other side. They undoubtedly never would do it as a matter of course, or without a special application to the court.

In this case, where every circumstance immediately connected with the offense has been disclosed by the witnesses examined on the part of the prosecution, the court certainly would not receive the affidavits on the part of the prosecution, if none were offered by the defendant, and the defendant, having withdrawn his affidavits before they were read by the court, it is considered that the case stands as if no such affidavit had been presented on his part. They have, therefore, not looked into or even opened the affidavits presented on the part of the prosecution. The case will therefore be decided as if there had been no affidavits on either side.

THE SENTENCE.

THE MAYOR. Mr. Hagerman, you have been convicted of an assault and battery on William Coleman. This charge, in some of the counts in the indictment against you, was coupled with an intent to kill. The jury found you guilty of the less offense, and acquitted you of the greater.

You assaulted Mr. Coleman in one of the public streets in this city, knocked him down, and, while helpless and entirely within your power, you chastised him, as though totally re-

gardless of his situation. You renewed, and again renewed your attack, and continued the infliction of blows with a severity and to an extent unwarranted and almost unexampled.

On that occasion your conduct demonstrated an utter want of feeling: you was under the control of strong outrageous passions. You are a young man; and it is sincerely to be hoped, from your good standing in society, from the character you have hitherto, and until this unfortunate occurrence, sustained, and from the respectability of your friends and family, that you will learn to amend your conduct and govern your passions.

On the trial, your counsel insinuated, that you had been provoked to adopt this course, by a certain publication against you, which appeared in the paper of the prosecutor.

Admitting that you had been provoked, as has been asserted, this is no justification of your conduct; and I wish to impress on your mind, and hope that the audience will profit by the admonition, that whatever may have been the provocation, you should have restrained your passions.

In this community, the law is open for the redress of every injury; and if, instead of having recourse to legal measures, men, in pursuance of your example, should undertake to avenge their own wrongs, the dominion of the laws would be subverted, and disorder and confusion prevail.

Sir, there is no apology for you in the eye of the law: you are guilty; and the insinuation of your counsel in your defense, is entitled to no weight.

There is one consideration which has had an influence with the court in lessening your punishment. It appeared on the trial that a civil action against you for the same offense, of which you stand convicted, is pending.

The sentence of the court is that you pay a fine of $250 and the costs.

Mr. Coleman had also brought a civil action against Hagerman for assault and battery, laying the damages at $10,000. It was tried on April 6th and 7th before Judge Ambrose

Spencer, Chief Justice of the Supreme Court of New York and a jury.

The judge, in the course of his charge to the jury, instructed them that it was their duty to give damages to the plaintiff on two grounds: first, for the injury to his feelings and person, and secondly, for the sake of *public example,* to deter others from the commission of similar offenses; and that the conviction and fine in the sessions ought to go in diminution of the damages on the score of *public example,* but not on that for the *private injury.*

The jury rendered a verdict in favor of the plaintiff for $4,000 damages.

THE TRIAL ALBERT W. HICKS, FOR PIRACY, NEW YORK CITY, 1860.

THE NARRATIVE.

One evening in March, 1860, the sloop E. A. Johnson, sailed from New York bound for Virginia to obtain a cargo of oysters. On board were four persons only; the Captain, Burr, the mate, Johnson and two young seamen named Watts. The next morning the vessel was picked up in the lower bay with not a soul to guide her and bearing evidence of foul play. It was also evident, as the bowsprit had been carried away, that she had been in a collision of some kind. The cabin and deck were covered with blood and bore dire marks of a fearful struggle.

The news of the tragedy soon spread through the city and the next day the landlord of a rooming-house in a poor quarter, reported to the police that a man named Johnson who lived in his house had come home unexpectedly the previous day with an unusual amount of money which he said he had received as prize money for rescuing a sloop in the bay. He had left the night before on the Fall River boat with his wife and child. He was traced to Providence and brought back to New York. In his possession were found Captain Burr's watch and some of his clothing; also clothing and other things belonging to the sailors, Watts. No trace having been discovered of the three missing men, the fugitive whose real name was Hicks, was indicted for their murder. But at the same time he was indicted for robbery on the high sea, which being also a capital crime, viz. piracy, he was put on trial for that.

The evidence was most conclusive. He was identified by several persons as being the Johnson who had shipped on the oyster sloop. He was seen the next morning rowing to

the shore of Staten Island in the yawl belonging to the sloop. Later he was encountered on his way to the city by persons who noticed him carrying a bag and who saw that he had a quantity of gold and silver which he afterwards exchanged for bank notes with a broker, who clearly identified them. The Captain's watch, his clothing and articles belonging to the two sailors, were also proved beyond a doubt, and he did not produce a single witness to contradict the case against him. But he denied that he had ever been on board the oyster sloop or had ever seen Captain Burr.

The jury very promptly returned a verdict of guilty. Hicks for nearly a month maintained his innocence and then broke completely down and made a full confession. He acknowledged himself one of the most terrible criminals that the history of crime records; from his youth a robber, swindler, free-booter, mutineer and pirate. He had been guilty of many murders and had up to this time led what would seem to be a charmed life.

The day of his execution was like a fete day in the metropolis of America. He had been sentenced to be hanged on Bedloe's Island; a large steamboat was chartered by the Federal authorities to convey to that place the criminal, the officers of the law, the city politicians and their friends. It was accompanied by a fleet of excursion boats loaded to the water's edge. When he landed at the pier on the island, small boats of every description covered the water everywhere and in the presence of thousands of spectators and before him the sloop, E. A. Johnson, newly painted, her stern close to the gallows and her decks and rigging alive with human beings, he was swung into eternity.

THE TRIAL.[1]

In the United States Circuit Court, New York City, May, 1860.

HON. DAVID A. SMALLEY,[2] *Judge.*

[1] *Bibliography.** **The life, trial, confession and execution of Albert W. Hicks, the pirate and murderer, executed on Bedloe's**

May 18.

The Prisoner is indicted for having on March 21 last made a violent assault on George H. Burr, on the high seas, on board the sloop Edwin A. Johnson, and there feloniously and piratically carried away the goods, effects, and personal property of the said George H. Burr, who was master of that vessel. The property consisted of about $150 in gold and silver coin, a watch and chain of the value of $26, a canvas bag, a coat, a vest, one pair of pantaloons, and a felt hat. Second indictment is the same as the first, but charges the felony to have been committed in the lower bay.

The prisoner was also indicted for the murder of George H. Burr, master of the Edwin A. Johnson, and two seamen named Oliver Watts and Smith Watts. As robbery on the high seas is piracy, and punishable with death, the prisoner was placed on trial for the robbery only.

He pleaded *Not Guilty.*

Island, New York Bay, on the 13th of July, 1860, for the murder of Capt. Burr, Smith and Oliver Watts, on board the oyster sloop E. A. Johnson. New York: Robert M. DeWitt, publisher, 13 Frankfort Street.

This pamphlet of 84 pages contains, in addition to the report of the Trial, a history of the case, the prisoner's confession, made after his conviction, "containing the history of his life, with a full account of his piracies, murders, mutinies, high way robberies, etc., comprising the particulars of nearly one hundred murders." Also his "phrenological character" by L. N. Fowler, Professor of Phrenology, a full account of his execution and the story of the pirate Gibbs, executed 29 years previous on Ellis's Island for similar crimes, and a poem in 10 stanzas, entitled "Blood for Gold; or the Confession of Hicks the Pirate."

It has numerous woodcuts, as follows: Portraits of Hicks and his wife, the boat in which he escaped from the oyster sloop, the deck of the sloop and the blood stained cabin, portraits of Captain Burr and Oliver Watts, a full page picture of the sloop, the detective describing the murderer's arrest to the reporters, the people of New London making an attempt to lynch the murderer.

[2] SMALLEY. DAVID A. (1809-1877). Born Middlebury, Vt. Admitted to Bar 1831 and practiced in Burlington, Member State Legislature 1842; Collector of Customs, Vermont, 1857; United States District Judge, 1857-1877.

James J. Roosevelt,[3] U. S. District Attorney; *Charles H. Hunt* and *James F. Dwight,*[4] Assist. Dist. Attys. for the *Prosecution.*

Henry B. Graves and *George W. Sayles* for the *Prisoner.*

The following jurors were selected and sworn: Bernard McElroy, Owen Foley, John Coulter, Geo. W. Jackson, Jas. C. Rhodes, Isaac Jerome, Andrew Brady, Robert W. Allen, John Farrell, James N. Fuller, John McCalvey, Benjamin Sherman.

MR. DWIGHT'S OPENING FOR THE PROSECUTION.

Mr. Dwight. You are empannelled, gentlemen of the jury, to try the issue between the United States and the prisoner at the bar, charged with robbery upon the high seas. Robbery committed upon the high seas, or in any basin or bay within the admiralty maritime jurisdiction of the United States, is declared by the act of Congress passed in 1820 to be piracy, and punishable with death. The indictment against the prisoner charges him in the first count with having on the 21st of March last, on the sloop Edwin A. Johnson, committed the crime of robbery upon George H. Burr, master and commander of that vessel, and with having feloniously and violently taken from him a watch, a large sum of money, and some wearing apparel. Robbery is the felonious and forcible taking the property of another from his person or in his presence against his will, by violence or by putting him in fear.

[3] ROOSEVELT, JAMES JOHN (1795-1875). Born New York City; son of Jacobus J., Jurist, Hardware Merchant; lived at No. 99 Maiden Lane, later 45 Broadway, N. Y. Graduated Columbia Coll. 1815; admitted to Bar (1818); became partner of Peter Jay. Retired temporarily from profession 1830; resumed practice 1831. Member Legislature 1835-1839 and 1840. Member of Congress 1841-3. Justice State Supreme Court 1851-1859; resigned 1859. U. S. Dist. Att. 1859-1860. Married May 30, 1831, in Paris, Cornelia Van Ness. General Lafayette gave away the bride.

[4] DWIGHT, JAMES FOWLER (1830). Grad. Williams Coll. 1849. Studied and practiced law in New York 1858-1860. Left legal practice 1861 and joined Union Army as Sec. Lieut. of Cavalry. Provost Marshal General, Depart. Mo. 1863. Mustered out as Col. of Cavalry 1865 at New Orleans. Ap. Register in Bankruptcy N. Y. See "Descendants of Henry Dwight (1874) pp. 753-4.

It is larceny accompanied by violence. The punishment, as you will perceive, for the offense committed upon the high seas, is different from its punishment when committed upon land. It is to protect more effectually and punish more thoroughly offenses occurring upon vessels upon the high seas, where the protection for person and property is not so great as it can be on land, where individuals are so much surrounded by the police regulations to protect them and their property. In this case, the prosecution will show to you, gentlemen, that on the morning of Wednesday, the 21st of March last, there was found floating in the Lower Bay of New York a deserted vessel. Her strange appearance attracted the attention of several vessels in that vicinity—among others the steam tug Ceres, which bore down to her, and the captain of which boarded this vessel. On reaching the deck there was presented a most unexpected and fearful sight. A state of great confusion appeared. The bowsprit of the vessel was broken off, and its rigging was trailing in the water. The sails were down, and the boom of the vessel, which had been set, was over the side of the vessel. There was no human being found on the vessel, and no light. Forward of the mast appeared a large pool of blood, which had run down to some cordage and sticks at the back of the mast, and also down the side of the vessel into the sea. This was just aft the forecastle hatch, on which, or near which was found some hair—a lock of hair. Amidships, and totally disconnected with this appearance of blood on the foredeck, there was another large patch of blood, showing signs as if a body had lain there; this also ran down the side of the vessel. Still further aft, just back of the small companionway, they found traces of blood again, also disconnected with that in the middle or forepart of the ship. Aft there appeared signs of a bloody body having been dragged from the entrance to the cabin. There was blood upon the rail and over the side, and it seemed as if an endeavor had been made to wash it off. On descending into the cabin, a state of still greater confusion appeared there. The few articles of furniture were disarranged. The companion-way steps were pulled

down and some of the sails which lay on the companion-way were pulled out. The floor was wet and bloody, and bore signs of having been covered in its entire extent with blood, which had been washed off with water, probably brought in the pail which was found there. Upon the handle of the pail there was found some hairs, where the hand would naturally hold it. These hairs were of different color to those found in the other parts of the vessel.

The appearance on the floor and the disposition of the articles lying in the cabin, together with the two auger holes found bored in the lower part of the cabin, where the floor slanted down, showed that an endeavor had been made in washing the floor of the cabin to let the water run down. The auger with which these holes were bored was found there, and also some little chips which had been bored out of the floor. It seemed as if the attempt had been given up in the cabin, and the vessel had been abandoned afterwards. There was a small stove in the cabin and a pile of wood under which the blood had run. On the wood was lying a coffee-pot or a tea-pot with fresh tea leaves in it. The side of the tea-pot was indented and covered with human hair, which was likewise black like that found on the pail. There was nothing further than this to direct suspicion, and the vessel was taken in tow by the Ceres and brought up on the morning of Wednesday, the 21st of March, to the slip at the foot of Fulton Market. On the affair being noised about the town, the sloop was visited by a large number of persons; among others by persons acquainted with the vessel and those belonging upon her. It was found that this was the sloop E. A. Johnson, owned at Islip, Long Island—a vessel belonging in this district, and commanded by George H. Burr, who was also part owner. The sloop had been engaged in the oyster trade in Virginia, and had recently come in, and had on the 13th of March, a week previous, cleared from here to go to Virginia for another cargo of oysters. The crew consisted, when she cleared from here, on the 15th of March, of Geo. H. Burr, master, two sailors—Oliver Watts and Smith Watts—young men, brothers, residing at Islip, and

the defendant, who, under the name of William Johnson, had shipped as first mate. During the day a great number of persons visited the vessel, and the daily press of the afternoon and the following morning scattered broadcast all over the city and its vicinity information concerning this affair. The attention of the public finally addressed to this fact was the cause of developing many slight circumstances, which gradually formed themselves into a chain of circumstantial proof directing the attention of the officers of justice to the offender, and resulting in the arrest of this prisoner. It was found that on Thursday, the 15th of March, the vessel sailed from here, being chartered by one Daniel Simmons, an oyster merchant of this place, living at Keyport, and one Edward Barnes, living at Keyport, to go to Virginia for a cargo of oysters; that it went out for a cargo as I have described, and that the captain had a large quantity of money in his possession to purchase oysters. The vessel went that week to Keyport, lay there some time, and in the last part of the week ran to Coney Island, and lay in Gravesend bay, waiting for a favorable tide and wind till Tuesday afternoon. During the Sunday, Monday, and Tuesday that the vessel lay there, the captain, crew, and others went on shore at different times, and one of the Watts boys had gone to Brooklyn on Monday or Tuesday, and returned on Tuesday, and on his return the vessel immediately proceeded to sea. The vessel had waited with its sails up, if I remember correctly, for the arrival of young Watts. He was taken off the beach in a yawl-boat which was on board the vessel, and then she proceeded on her Virginia voyage. It was watched by persons who belonged to Coney Island, and also by two vessels lying at anchor at the same time, some distance from Coney Island. This was the close of the day—Tuesday about six or seven o'clock, if I remember rightly. From that time until the next morning only one thing is known of that vessel, and that by a connection of peculiar circumstances.

What was done upon that vessel during the night no mortal man save the prisoner knows. Oliver Watts and Smith Watts have never since that been seen in life. What became

of them we can only judge by those circumstances which are thrown around by the appearance of the vessel and by the conduct of the prisoner, and other circumstances connected with him. Whether their bodies be in the sands of the lower bay, or floated out to sea, and are tossed by the waves there, we do not know. The prisoner fails to give an account of them, and we can only suppose that they were murdered by him and thrown into the sea. Next morning, Wednesday, the 21st, the prisoner appeared upon Staten Island, with the yawl-boat of this sloop. Except, as I say, by implication, nothing is known in the meantime. The circumstances to which I refer are these: The schooner J. R. Mather, Captain Nickerson, was going from this city to Philadelphia, clearing from here March 20, and running down the bay. Some time during the night, between twelve and two o'clock, the vessel, then being down off Coney Island, had a collision with a vessel coming in. It appeared that the vessel going out saw this sloop coming in, and on going within three or four hundred feet, the course of that other vessel was changed, and she run down directly to this schooner, as if to run across its bow. That seemed to fail, and the course of that vessel was again changed; but instead of running across the bow of the schooner Mather, it seemed to fail, and struck the bow itself, cutting it down within six or eight inches of the water's edge, and rendering the schooner incapable of proceeding to sea, and it returned for repairs. There was the finger of Providence again in that. On coming into this port the captain of the schooner J. R. Mather found that the sloop E. A. Johnson had come in, and by a comparison of the rigging of her bowsprit, found on the bow of his boat, with the rigging of the E. A. Johnson, that that was the vessel which caused the collision. Further than this, nothing is known of that night. There was no cry from the deck of the E. A. Johnson when it encountered the schooner; there was no hail, no attempt to disentangle themselves, and nothing was known of what was going on upon the deck of that vessel—whether there was a human being on it or not. The captain of the sloop saw a dark form aft, but could not

say whether it was one man or two men. He knew that some person must have been on board, from the fact of her changing her course as I have described. On the morning of Wednesday, the 21st of March, about six o'clock, the prisoner came on shore at Staten Island, a little below Fort Richmond, which is in the Narrows, opposite Fort Hamilton. He was seen very soon afterward, coming on shore, by a Mr. Neildinger, whom he addressed, inquiring if his boat would be safe, designating where he had left her, to which Neildinger replied it would be all right, and the prisoner drew it upon shore, where it would be a little safer. The prisoner had with him a large canvas bag, which he carried upon his shoulders. After leaving Neildinger, he passed up Staten Island, encountering one or more persons, whom he addressed, and came to Vanderbilt's landing, arriving there shortly before seven o'clock. He there inquired of the boat tender where he could procure some breakfast, and was directed to a shop, where he ate breakfast, and in payment offered to the boy who served him a $10 piece, which the boy could not and did not change, and he afterward gave him some silver. Afterward, in conversation with Mr. Egbert, in charge of the station there, he said he was a seafaring man; that he had been on the vessel William Tell in the lower bay; had had a collision with another vessel; that the captain had been killed against the mast, another person had been knocked overboard, and he had merely time to escape from the vessel with the money. He is described by that witness as being excited. He took the ferry-boat Southfield, left there at seven o'clock, and came up to the city. On the way up he entered into conversation with Francis McCaffrey, a deck hand. He produced before him a bag of money, and asked him to count it. It was a canvas bag, and contained $30 in silver and a large quantity of gold. McCaffrey counted it, and the prisoner took possession of it again, and during the passage up had some more general conversation with him.

On the arrival of the Southfield at the Battery, between seven and eight o'clock, the prisoner took some refreshment—a cup of coffee, I think, and then hired a small boy to take

his bag—a small canvas bag—filled with clothing and other articles, up to his house; it was taken up to his house in Cedar street, and left there. The prisoner lived at 129 Cedar street, with his wife; the other occupants of the house were Mr. and Mrs. Burke. They had various conversations with him during the day. During the morning the prisoner went out, and at the shop of Mr. James, on South street, exchanged the most of the money which he had (about $150), part gold and part silver, and received in exchange bills on the Farmers' and Citizens' Bank of Williamsburg. He made the remark to Mr. James at the time, that he came honestly by the money. Through the day he packed up his clothing, and in the afternoon, with his wife and child, took the Fall River boat, running from here up the Sound, and went up to Fall River, telling the carman who took his baggage, if any inquiries were made for him, to throw the inquirers off the scent. From Fall River he went to Providence. The whole or most of these facts coming to the knowledge of the officers of justice, two persons followed on his track, and very soon traced him from Fall River to Providence, and after some search were enabled to find him there. He was arrested on Friday night, the 22d or 23d March. They traced him to a small house in the outskirts of the city, and at one o'clock midnight obtained an entrance into the house, where they found him in a back room in bed. The windows and doors of the house were closed, and the defendant was found concealed under the clothes of the bed, with his head covered up. The officers withdrew the clothes, and found the defendant there in a profuse perspiration and feigning sleep. He was awakened, or pretended to be awakened, by the officers. They said that they wanted to see him on a charge of passing counterfeit money on the hackman who had brought him to the house; he arose, and was asked to point out his baggage. He described two trunks, which they took with them. There were found on him a watch and a quantity of money—among the rest, about $120 in bills on the Farmers' and Citizens' Bank of Williamsburg, corresponding with those exchanged for him by Mr. James of this city.

The clothes were returned to this city, and next morning the prisoner was brought here and lodged in the Second District station-house. On his arrival, he was told that the charge of counterfeit money was a mere feint, and that that was not the real charge against him; to which he very coolly replied that "he supposed so," or something to that effect. To Mr. George Nevins and Mr. Elias Smith, the persons who pursued and discovered him, he said he had no knowledge whatever of the sloop E. A. Johnson; had never known her or Captain Burr, and had not been on Staten Island for many months. These statements he has maintained to the present time, constantly refusing to give any account of himself in connection with this vessel, or of anything which transpired on board of her after she left her anchor in Gravesend bay. That denial, contrary to the truth, that he had ever known Captain Burr, or ever been on the vessel E. A. Johnson, or had been on Staten Island when he was charged with being there, shows a full consciousness of the fatal effects of any evidence tending to establish that fact if uncontradicted, and in that contradiction he persisted. On being brought to this city, he was confronted with various persons that he had known before; with the man who carried his baggage; with the deck hand of the Southfield, and with various persons who saw him on the sloop Johnson; the watch found upon him was, through the hand of Providence, identified as the watch of Captain Burr, worn by him on the day of his leaving this port. That watch the prisoner stated he had had in his possesion for a long time; that he bought it from his brother, and paid a certain sum of money for it; and to the other articles, he claimed that they were his, and gave various accounts concerning them.

On the Monday following his being brought here he was examined before a United States magistrate, was indicted, and is now brought before you for the offense of robbery on the high seas. I have thus briefly gone over the various circumstances of this case as they will be produced to you by the evidence. I deemed it necessary to state to you the line of evidence that is intended to be pursued by the prose-

cution, that you may understand the bearing of each portion of the testimony toward the rest. You will perceive in this case one peculiarity. A great number of witnesses will be examined for the government, and among these witnesses there is a very slight connection, either with each other or with the individual himself—particularly with each other. Various witnesses will be produced before you from Islip, Gravesend, Staten Island, New York, and Brooklyn, who are unacquainted with each other, who each come up to add their little fibre to this strong cord of proof which is thrown round this defendant. Each little item of evidence is of no particular strength, of no decision in itself, but only forming a strong chain, a perfect chain, as claimed by the government, fixing without question and without doubt the guilt of this offense upon the prisoner. Your attention, gentlemen, is invited to this carefully and scrutinizingly, which scrutiny, I feel convinced, you will give to it. It is a question of great interest—it involves the punishment of a terrible crime. If this prisoner is the true offender, the result may be very serious to him. It involves a vindication of the law and the punishment of a crime which he thought he had covered up; for there is very little doubt he thought he had sunk the vessel by the collision in the Lower Bay; and I think you will say, as I have, in looking over the evidence, that the hand of Providence, in marking the track this man was to pursue, has placed upon that track the eyes of those who would come up afterward to identify him. It seems strange in this center of swarming thousands, at such a time of the day as this prisoner escaped from that sloop, he could not have hidden himself. It seems as though there was but one eye to watch, and one instinct to follow and observe him. From the very time that he landed on Staten Island until he went to Providence, his whereabouts was known all the time. I cannot explain either to you or to myself what it was that caused him to be watched; that he was watched and observed will be shown. From the very commencement of his being seen on the E. A. Johnson till he was brought here, everything is known concerning him, save the twelve hours inter-

vening from his sailing from Coney Island till the next morning. He has been called upon to give an account of the property of the Wattses and Captain Burr—but he claims it as his own. He has been called upon to give an account of those men with whom he was, and who are no doubt already dead; but he utterly disclaims any knowledge of them or of the vessel upon which they were. That, gentlemen, you will judge of on the trial. You will say whether he is guilty of the triple crime, the double, bloody, damning crime that occurred on the deck of that vessel; and if so, as jurors and citizens, whatever may be the result to him, and whatever the punishment, I have no doubt but that your verdict will be in accordance with the law and the facts.

THE EVIDENCE.

Selah Cowell. Know the sloop E. A. Johnson; I built her, owned one-half and Captain George H. Burr the other. Saw prisoner on board the E. A. Johnson on Wednesday evening before she left at the Spring Street dock. She cleared Thursday, 15th, to Deep Creek, Virginia, for oysters; the crew consisted of Captain Burr, Oliver Watts and Smith Watts and the prisoner, as mate. Captain Burr was about thirty-nine; Oliver Watts about twenty-four and Smith Watts about nineteen. Captain Burr was dark; Oliver Watts had very light hair and Smith Watts had dark brown hair. I saw the E. A. Johnson at the Battery when she was brought in; saw the yawl boat of the Johnson with the harbor police; she had that yawl boat before she left. On examining the Johnson I found a black canvas valise and some clothes; brought them here, found the things now in it and a knife in it.

Cross-examined. I never saw Captain Burr since. Oliver Watts was a large man, about 170 pounds; Smith Watts perhaps 180 pounds, very large for his age; Captain Burr was a small man, not more than 125. The Watts boys were on board the sloop the Wednesday evening before she sailed. When defendant was on board on Wednesday evening he was dressed with a blue shirt and overalls like those I found in the vessel. I took supper there. The prisoner was at supper also.

John A. Boyle. Am enrolled and licensed clerk in the Custom House; the E. A. Johnson was enrolled on 3rd December, 1858, as an American vessel.

Daniel Simmons. Know the sloop E. A. Johnson. Chartered last Spring from this port to Virginia for oysters on 14th March. She left here last on Thursday morning 15th March. Settled with Captain Burr for his charter on 14th March; gave him $200 in silver coin, quarters,

halves and ten and five cent pieces. In gold, two tens, two fives, a two and a half, one dollar in gold and a half dollar in a shot bag. Did not know where the Captain used to keep his money; there was a secret drawer in the shop where I kept money when I sailed with him. Have seen that bag since when it was taken out of the prisoner's pocket at the station-house. At the Station-house when he was brought from Providence I asked him if he had ever seen me before; he said he had not. Captain Weed asked him if he knew me and he said he did not. Told him I saw him on board the E. A. Johnson at Spring street dock; said he never was there and did not know there was such a vessel; asked him if he knew Captain Burr, he said he did not, that he never saw him and never was on board the vessel. When I saw prisoner on board the sloop his whiskers were red and full, when I saw him after his whiskers were darker.

David S. Baldwin. Know prisoner; saw him on board the sloop on 13th March; he was helping to get out oysters; told me that he was going to Virginia with Captain Burr for a load of oysters; that if I wanted to go up town he would stay on board and mind the vessel; I was cook; this valise I saw before; the prisoner handed it to me when he came on board on the 13th; prisoner did not stay on board that night; I saw this knife before with the prisoner, on board; saw prisoner on Wednesday morning on board the sloop at breakfast; did not see him again until to-day.

Cross-examined. I left the sloop on Wednesday; Smith Watts took my place as cook; prisoner first came on board between six and seven Tuesday morning; never saw him before.

James H. Bacon. Am in the oyster business; prisoner I saw on the E. A. Johnson on the 13th March; was there two days getting out oysters; Johnson was there shoveling out oysters; he wore his whiskers same as he does now; he had a check shirt, short coat, and comforter about his neck; next saw him after his arrest, when I was called on to identify him.

Reuben Keymer. Saw prisoner the day before he sailed from Gravesend; he came ashore after one of the Wattses just at sunset. Prisoner and Watts returned to the sloop in a yawl boat. Prisoner was dressed in a coat of the description of the one produced; watched the sloop going out; she went south-west to clear Coney Island and then took a southerly course.

Cross-examined. Was not well acquainted with any of them except Captain Burr; am certain the prisoner was the same man who sculled the yawl.

Charles Baker. Knew Captain Burr and the sloop E. A. Johnson; saw her in March last at Gravesend bay; knew Smith and Oliver Watts by sight. Saw prisoner come ashore and take away some of the hands, saw the sloop go away after prisoner and the young man got on board; Captain Burr was on board; there were four on board altogether.

John S. Whitworth. Saw prisoner at Gravesend Beach on

19th or 20th of March last; he came ashore in a yawl boat; was painting a vessel at the time; the boat was not more than a few minutes there when I saw her go back again toward the E. A. Johnson which was about 100 or 120 yards off; saw prisoner on the day following, he came ashore in the yawl boat; think he had a monkey coat on on Tuesday.

May 19.

Richard Eldridge. Saw Captain Burr and the two Watts boys and Johnson on board the sloop Johnson; went out in the Sirocco in company with the sloop, Johnson, past Coney Island, up to the Health Office. Captain Burr, the two Watts boys and Johnson were on board when she left; she went on the usual course of southern vessels. Took a letter from Captain Burr to his home. Johnson wore a beard same as now but no mustache on the upper lip.

George Neidlinger. Live on Staten Island at Port Richmond, saw prisoner at six on the morning of 21st March; asked me if there was anyone to interfere with his boat and I said, no. He left his boat on the south side of the fort and he came from that direction. He had on a monkey jacket with a Kossuth hat; he had a feed bag which he carried on his shoulder.

Michael Durnin. Know prisoner; saw him on 21st March; I was going down to Port Richmond and met him with a bag on his shoulder.

Augustus Guisler. Attend bar at Vanderbilt's Landing; know prisoner; saw him on Wednesday morning, 21st March; came to our shop and said he wanted something to eat, he asked me if I had any coffee and I said I had not, but told him where to get it; he went out and came back again and said they were not up; he asked for eggs and invited Mr. Hickbert to take a drink. He showed me a $10 gold piece and asked me if I wanted it. I said, "No sir, I have not change for it"; he then took some silver and paid me. The coat he had on was like that produced, it had patches on the elbow like this. He told Mr. Hickman he was Captain of a sloop, that he had been run into and one man was killed and another knocked overboard; he said he was downstairs asleep at the time and had only time to get his clothes and the "needful" (at the time shaking the bag) and come ashore in the yawl.

Abraham S. Hickbert. Saw the prisoner on 21st March, at the Vanderbilt ferry, at about half-past six; he asked me where he could get something good; I showed him; he went in and asked Augustus, the barkeeper. He told me that the vessel he was on was the William Tell; that he had been run into by a schooner, and one man was killed against the mast, and another knocked overboard. Prisoner shook a bag in his hand when he said he had only time to save the one thing needful.

Cross-examined. Had never seen him before, to my knowledge; cannot tell exactly how he was dressed, nor whether he had whiskers.

Franklin E. Hawkins. Am cap-

tain of the sloop Sirocco; saw the prisoner on board the E. A. Johnson; my vessel was lying at Coney Island, and the sloop Johnson was lying at the same place; on the Sunday before she sailed I went out with her; Johnson came ashore in the yawl boat on the evening before the sloop sailed.

Patrick McCaffrey. Am a deck hand on the Staten Island ferry-boat Southfield; know prisoner; saw him in the gentlemen's cabin in about seven on the morning of 21st March; asked me if I was a judge of this country's money; that he was afraid them fellows were cheating him; I said I was a pretty good judge of gold and silver, but did not know much of bills; he asked me to count the money; I counted out three or four gold pieces and told him what they were; the bag was a kind of a shot bag; he told me to mind his canvas bag and he would give me the price of my bitters; my attention was particularly called to the coat by it being bare in some places and having patches on the elbow. Next saw prisoer in station-house, he denied ever having seen me; when I saw him I said, "there's the man."

Cross-examined. Had never seen him before I saw him on the Southfield; he had whiskers up to his ears but no moustache; his whiskers were blacker than they are now.

William Drumm. Met the prisoner on a Wednesday morning, about eight o'clock; at the South ferry; about 21st March; saw him at a coffee and cake stand kept by Charley McCosten; he got a cup of coffee and a piece of pie; he put down a gold piece, and the man said, "Oh, ——, have you no smaller change than that?" he then gave him something else. Carried Johnson's bag to the corner of Cedar and Greenwich streets; asked him fifty cents, and he gave me three shillings, and said if I did not go out of that he would kick me; there was a Dutchman there who told him two shillings were enough; pointed out the prisoner on the following Sunday, in the station-house.

Cross-examined. Testified before the commissioner that the bag was very heavy and cut my shoulder, and that it did not seem to be filled with clothes; saw him first at the coffee stand; he wanted a carriage first.

Patrick Burke. William Johnson had a room from me in Cedar street near Greenwich; saw him on Wednesday before his arrest about four o'clock; saw some bills with him that day; he went away by the boat that evening; he took his wife and child with him; he left a ship's instrument (a compass, I think) behind at my house; he always paid me my rent like an honest man.

Catherine Burke. Am wife of the last witness. Johnson did not say anything about what voyage he was going on the last time he went to sea; had seen prisoner with money on previous occasions.

Albert S. James. Am a broker; saw prisoner on Wednesday 21st March at my office; asked me to take some silver at as low rate as possible; changed about $135 in silver and $35 in

gold; it was in a bag and tied up in a handkerchief. I gave him $130 in Farmers' and Citizens Bank of Williamsburg, Long Island; tens, fives, threes and twos.

Richard O'Connor. On 21st March took his baggage to Fall River boat. He told me if anyone inquired where he was going to tell them it was none of their business.

George Nivens. Am officer of second precinct; understood a man answering prisoner's description had left in the Stonington boat but traced him to Providence where I arrested him in a boarding-house; found him in bed with his wife; shook him up and searched him; found on him a watch; took away two trunks, two bags, two handkerchiefs and a knife, a pocket-book and some bed-clothing which he claimed to be his; I found in the pocket-book $121 in bills on the Farmers' and Citizens' Bank of Williamsburg, mostly fives and tens. First I told him I arrested him for passing counterfeit money. He told me that the watch belonged to his brother; said he had not been in New York or Staten Island during the month of March; that he had been speculating about the market and had about $60; at another time he said he got the money from his brother. He denied all knowledge of Captain Burr and the sloop E. A. Johnson.

Elias Smith. Was with Nevins when he made the arrest; am a reporter of the Times. The prisoner denied all knowledge of the sloop E. A. Johnson or Captain Burr; said he had not been in New York for two months. I said to him: "You are charged with imbruing your hands in the blood of three of your fellow men for money;" prisoner shook his head and said, "I do not know anything about it;" then said to him, "You have been on board the sloop Edwin A. Johnson;" he shook his head and said he did not know anything about it, and was never on it; Mr. Nivens read the newspaper accounts of the transaction to him; he said he did not care much about the arrest except for the interruption to his business, as he had purchased a place in Providence; I told him he would be identified when he got to New York; he said we might think what we liked; he seemed annoyed at our pressing the subject.

Cross-examined. I said to him, "If you are innocent, then you are willing to go back to New York?" after hesitating he assented.

Samuel Downes. Am captain of the steam-tug Sirius; picked up the sloop E. A. Johnson on the East Bank about six o'clock in the morning; brought her to this city; the bowsprit was broken off about midway; the jib hung overboard; there was no small boat on board; boarded the sloop, there were pools of blood on the deck and the cabin appeared as if some one had been slaughtered there; there were marks of a hand as if struggling and then there appeared to be a blow of a hatchet where the hand mark was, as if it was cut; the blood flowed down to the scuppers; there were evidences of a scuffle. There was a mark of a foot in the

blood as if some person with a boot or shoe had stepped in it; seemed as if some person had been dragged from there and thrown overboard; there was some hair found in the pool of blood forward, it was dark brown hair.

Hart B. Weed. Am captain of the Second District police; examined the clothes brought by Nivens from Providence; there were coat, pants, vest, and some flannel clothing contained in a bag used for feed; a daguerreotype in the bag; I sealed it up and gave it to the clerk of this court. (Is said to be that of the sweetheart of one of the Wattses.) Was at the station-house when prisoner was brought there; he said he knew nothing about it; asked him if he knew anything about the vessel or the murder, and he said he had not been in New York, Staten Island, or Long Island for some time; Dr. Bouton, the coroner's assistant, accompanied me to the sloop; we found a lock of brown hair lying partially in a pool of blood on the deck; also found hair on the coffee-pot in the cabin.

The cabin had a great deal of blood and had all the appearance of being washed down; I found a bucket, with a rope, which appeared to be used in taking up water; there was blood and hair on the rope attached to the bucket; there were holes bored in the deck; we found an auger with blood on it; the auger fitted the holes in the deck; found cuts on the clothing of the captain's berth; the railing had the appearance as if a hand was on it and had been cut; saw marks which seemed as if a person with bloody clothing had been shoved down the side of the vessel; there was blood on the stove and wood in the cabin; the cabin was in a deranged condition.

Cross-examined. (A shirt and linen coat produced).—These are the clothing we found in the captain's berth with cuts on them; there was no blood on them nor on the bed; they had the appearance of being clean and folded up; examined the prisoner to see if there were any marks on him; found no fresh marks of violence on him; on his arms I saw the figure of an eagle printed in India ink.

Theodore Burdett. Belong to the harbor police; found a boat about seven 22nd of March, the day after the sloop was brought up to city, fifty yards to the southward of Fort Richmond. Hickbert and Gresler gave me information where I could find the boat. Mr. Selah Howell claimed it and took it away.

Samuel J. Conover. Am a watchmaker, doing business with Mr. Squire. Remember repairing a watch about a year ago for a person named Burr. It was not brought to me by Burr. It was a double-case silver, watch. The maker's name, J. Johnson and the number 21310. (Looks at the watch.) This is the watch that I repaired.

Cross-examined. In giving a description of the watch and its number I am aided by a record which we keep at the store; the record is in my handwriting.

Henry Seaman. I know Captain Burr's watch; had it in my hand on Tuesday at my house and he, Captain Burr, took it

away that evening; recollect leaving Captain Burr's watch to be repaired at some store in the Bowery a year ago last April; know it by its general appearance and by the guard and the way the guard is knotted. Knew the sloop Johnson and its yawl-boat; saw the yawl-boat at the police station after the sloop had been towed into the city.

Cross-examined. I left the watch at Mr. Squire's store to be repaired; did not go for the watch; remember the number of the watch, 21310.

Mr. Conover (recalled and produces the watch). It is as follows: Mr. Burr, D. B. silver watch, J. Johnson, Liverpool, 21,310. Dld.

Catherine Dickenson. Seventeen years of age. I knew Oliver Watts; saw him last on the Tuesday of the week he sailed; I gave him my daguerreotype.

Mr. Graves objected to this testimony.

THE COURT said he deemed the evidence was proper and important; it had been proved that a daguerreotype was found in a coat, and if the prosecution can prove that that coat belonged to young Watts, and that this is the daguerreotype this witness gave him, it will go far to connect the prisoner with the trantsaction on board that sloop. The evidence is not only eminently proper, but very material and important.

Miss Dickenson. When I gave him the daguerreotype he put it in his coat pocket; saw that coat since in the District Attorney's office; I think this is his coat and this the pocket he put it in; (daguerreotype produced); this is the same one I gave him.

Harriet Robinson. Am mother of the last witness; knew Oliver Watts for three or four years; he used to stay at my house when home from sea; he wore on that Tuesday his best coat; I should suppose this (the coat in which Captain Weed found the daguerreotype) to be the coat; know it from the lining, etc.; he said he gave $16 for it.

Abbey Hubbard. Am the mother of Smith Watts; on 7th March he started to go with Captain Burr to Virginia (identifies a portion of the clothes belonging to her son; patched this shirt myself; this bag has the initials of my present husband, Lorenzo Hubbard, on it; put my son's clothes in it that morning myself; knew the shirts; I cut them myself, and had them sewed; he was very large, and could not get shirts to fit him; I have had no tidings of him since, only that I suppose he was murdered. This was Smith Watts' handkerchief; I have washed and done it up for him for two years, and never saw one like it.

Dideme Burr. My husband Captain George H. Burr left home on 8th March last, have never received any tidings of him since; should know his watch from the case and its general appearance and the guard; this, I should say is the same watch. Saw some of his clothes in the Second Ward station house; he had a hat like this which he wore from home. This was his shirt; those pantaloons I think were his. This black

hankerchief was his, I hemmed it myself.

May 24.

Catherine Dickenson (recalled). Have had hair from Oliver Watts in my possession; it was in his daguerreotype which I gave to some one in the station-house; this daguerreotype and hair now handed to me are the same; knew this to be Oliver's hair because I cut it off myself.

The daguerreotype and hair of Oliver Watts were submitted to the jury to compare with the hair found in the blood on the deck of the sloop.

George Washburn. Took some riggings from the J. R. Mathew and fitted it to the broken bowsprit of the E. A. Johnson; it compared exactly with what was still left on the bow of the vessel; the schooner was said to have come in collision with the E. A. Johnson.

Mr. Hunt stated that the government had no further testimony to offer with the exception of that of Captain Nickerson of the Mather which he deemed highly important and material. He thought that the reading of the testimony of Mr. Nickerson taken before the Commissioner would be sufficient, if assented to by the other side.

Mr. Graves said they had not been able to agree with the counsel for the government as to the evidence of Captain Nickerson.

May 25.

Mr. C. H. Hunt. We have to inform the Court that Capt. Nickerson, whose testimony we were anxious to obtain, has not arrived, and we do not suppose we shall have his testimony today. It is proper I should state, also, that we have never regarded his testimony as indispensable in any sense, for if we had we would not have consented to proceed with the trial without his being present. We have, however, regarded his testimony as very important, as giving completeness to the chain of facts which we had it in our power to present to the Court and jury; and in this view of the case perhaps we were anxious that the testimony should not be submitted on the part of the government without that link in the chain. We now feel that we have done all we could to procure this testimony, in order to give the evidence such completeness as is in our power, and we do not now feel like asking the Court for any further delay in order to procure the testimony of Capt. Nickerson.[5]

THE SPEECHES TO THE JURY.

Mr. Sayles said they had no witness for the defense, and then proceeded to address the Court and jury on behalf of

[5] Captain Nickerson would have testified that the ill-fated sloop had run into his sloop, the John B. Mathew, early on Wednesday morning, at which time only one man was seen on board, and this man was subsequently observed to lower the boat from the stern, and leave the sloop. This collision took place just off Staten Island, and was so severe as to render the John B. Mathew unfit for sea.

the prisoner. He commenced by describing the sensation created in this city by the intelligence of this transaction, and that the public press had given a description of and directed the eye of the community to this one man. He then suggested that this tragedy may have been perpetrated by river thieves who have been driven to the lower bay by the Harbor Police, and who, perhaps, committed a similar one on another sloop on the same night. Counsel said, in cases of admiralty this court had a limited and special jurisdiction, derived from the laws of Congress passed under the Constitution of our country, which gives power to define and punish felony and piracy on the high seas. This court, therefore, had so much power, and no more. It had no common law jurisdiction. (He then cited several authorities.) He claimed that a portion of that act of Congress was unconstitutional; that Congress had no right to define and punish felonies on the high seas; it has no power to take away the rights of individual States to punish the crime for which this man stands charged. It was committed beyond the jurisdiction of the court, and it had no power to punish for this felony. He then read a reported case where an act of piracy had been committed in Boston harbor, and in which it was held that it should be tried in the courts of that State.

THE COURT. This was not a question for the jury, but should have been on demurrer, or might be brought up on a motion in arrest of judgment.

Mr. Sayles. The jury were the judges of the law and the facts.

THE COURT. Not on questions of jurisdiction. Those questions are always for the Court—for its decision.

Mr. Sayles. "On the high seas" meant either in the harbor of some foreign country, or beyond any portion of a coast where the sea ebbs and flows.

THE COURT. This was the opinion of English lawyers, but did not apply to American laws.

Mr. Sayles said—We have adopted the English common law.

THE COURT. Only to a limited extent.

Mr. Sayles cited from Chitty's Criminal Law, "that the

piracy must be distinctly proved to have been committed on the high seas, or the defendant is entitled to an acquittal." According to that law the admiralty had no jurisdiction within the limits of any county or city. The counsel then proceeded to appeal to the reason of the jury, and lay the facts before them. It was a case of great importance, not only to the federal government and to the community, but also to the unfortunate prisoner at the bar, and he called upon the jury to elevate their minds above outside prejudices. A supposed tragedy had been committed in the lower bay, and the government had undertaken to show, by circumstantial evidence, that this is the man who perpetrated it. Counsel referred to the nature of circumstantial evidence, and alluded to the recent case in this court where some half dozen witnesses swore positively to a man named Williams for post-office robbery, and subsequently swore as positively against another man, who was convicted.

Mr. Graves referred to the case of the two Bournes, (Am. St. Tr.,) in Vermont, who confessed to the crime of murder, but were afterward proved to be innocent. The evidence against Hicks was entirely circumstantial, and of such a character as to render it very uncertain; but the most astonishing thing about the prosecution was the charge that this one man should kill these three men, powerful as they were, and not receive a single scratch. There must have been a terrible struggle; blood was spattered over the ceiling, blood everywhere, but no blood on him, no mark of violence on his person.

Mr. Hunt. The only questions of law upon which there had been any dispute, were ruled upon by the Court, and I have nothing further to say.

Mr. Dwight had hoped that there might have been some chance of the innocence of the prisoner found in the course of the trial. But he had been disappointed; nothing which had been asserted by the witnesses for the prosecution had been contradicted. No attempt had been made to break any one link in the chain of the evidence. The defense would endeavor to induce the jury to believe that Capt. Burr

parted with his watch, which he had carried for nine years, to a pawnbroker; that Smith Watts had parted with the clothes which his aged mother had put up for him; that Oliver Watts had parted with the daguerreotype of the girl he loved. The time had not yet come when Yankee sailor boys gave up the pictures of "the girls they left behind them" without a struggle.

Mr. Dwight reviewed the whole case and the testimony, giving a graphic description of that dread night when this triple deed of blood was perpetrated, and concluded: Gentlemen, I have occupied your time longer than I intended, and I have but one word further to say. If this prisoner is not proven guilty of the crime against him, he is of course an innocent man. If there is in the breast of any of you one doubt concerning his guilt—one reasonable doubt as to his having committed this robbery of George H. Burr, as set forth in the indictment, in God's name give him the benefit of that doubt. It is his sacred privilege, and it is just as much his right as he has a right to his life or his liberty. If you have any doubt upon considering the evidence, give him the benefit of that doubt, or any which you may have. But, gentlemen, if through the five days of this trial there has crept into your minds a conviction that he is the man, and if that conviction has been strengthened by the evidence which has been adduced and placed before you—that no other but he had committed this crime, then I say that his conviction is the property of the government, and I charge you to give it to the government. Here, in your seats, where you have sat during these five days listening to the opening and the testimony, and the closing upon the part of the government—here, in your very seats, I charge you to give the benefit of your conviction to the government, and I charge you to do this in your jury box without any hesitation. Gentlemen, there was no hesitation on his part; with that sharp axe he cut down the fair-haired boy, Watts; and then returned and felled the other: and then the death struggle with the captain occurred. Gentlemen, there was no hesitation there; and if you are convinced of his guilt, let

there be no hesitation in your rendering in your jury box a verdict against him. There cries from the sands of Islip, "justice;" from that widow and from that mother. There comes up from the depths of the Atlantic, "from all the ships that float on it, and all that go down in the great deep"—there comes the cry of "justice." The prisoner equally calls upon you to do justice; and gentlemen, I ask you, in the name of the government, if you believe him guilty of this crime, which he committed speedily, summarily and devilishly, that you will let your verdict be speedy, summary and just.

THE JUDGE'S CHARGE, VERDICT AND SENTENCE.

May 26.

JUDGE SMALLEY told the jury that the case was clearly within the jurisdiction of the court, the occurrence having taken place in the harbor.

The *Jury* retired and after an absence of seven minutes returned with a verdict of *Guilty.*

Several days later a motion for a new trial was argued and denied and sentence to death pronounced, the day fixed for the execution being Friday, July 13 on Bedloe's Island.

THE CONFESSION.

After his conviction, he continued for some time to deny his guilt but on June 13 he told Deputy Marshal Angelis that he was ready to confess the crime.

Accordingly an amanuensis was procured and to him Hicks dictated his story. He said he was born in Foster, R. I., on a farm, that he had no taste for work and as a boy often stole things for which he spent several terms in jail. He ran away from home, worked a while in a shoe factory and then went to sea on a whaleship. On the voyage the crew mutinied, left the ship at Wahoo and engaged in the robbery and murder of the natives. Captured and imprisoned, after his release, he shipped on a Dutch vessel where he led another mutiny and reached lower California where he became a guerilla and freebooter and a frequent robber and murderer. He then went to the gold mines where he ran a gambling house, shipped again on another vessel and again became a mutineer and a pirate; came back to America, got on another ship which he and his companions took from the officers and started on new piracies, which lasted for several years. He then (about four

years ago) returned to New York where he engaged in numerous robberies at the docks and elsewhere. His last crime he describes as follows:

"In New York, I was careful of doing much, and was all the while on the lookout for some enterprise in my favorite field of action—the sea. I kept a sharp lookout for all small craft outward bound for cargoes of fruit, oysters, etc., and in a quiet way gathered all the information I could in regard to the number of hands they shipped, and the amount of money they generally carried. During my searches I came across the sloop E. A. Johnson, Captain Burr, and in making application was engaged on board of her.

I come now to the closing acts of my life, to the last scenes in my wicked and bloody career. From my youth up I lived by crime. I have steeled my heart against every good impulse. I have considered mankind my natural prey and have never hesitated to gratify my appetites, passions, and desires, no matter how dear the sacrifice paid by others for their gratification, and now society which I have so long outraged claims the only recompense I can make for all the wrongs I have committed; the law, which to me has ever been a subject of scorn and derision, now exerts its majesty, and calls on me to pay the penalty due for breaking it; mankind, against whom I have so long waged a bloody and resistless war, now clamors for my blood, in compensation for the innocent blood I have so often shed. Justice at last asserts her sway, and a dreadful punishment awaits me. But let me go on to the end.

The sloop E. A. Johnson offered an easy prey. She had on board, I supposed, from all information I could gather, something over a thousand dollars, and the entire crew consisted of but two boys and myself. I had never known or seen Captain Burr before I shipped with him. He had never done me injury or wrong, so that I had no revenge to gratify, no grudge to pay. He seemed a kind and amiable man, and would, I have no doubt, awakened kindly feelings in any heart but mine, and even I liked him. Yet I engaged myself to him solely, and only for the cruel purpose of taking his life, the lives of the two young men, and making myself master of the money I supposed he had on board.

I calculated to do this as calmly as you would contemplate doing any of the usual duties in the ordinary transactions of life. I had killed men, yes, and boys, too, many a time before, for far less inducement than the sum I supposed I should gain by killing them; and I had too often dyed my murderous hands in blood in days gone by to feel the slightest compunctions or qualms of conscience then. I never thought of the consequences of such a crime. The fear of detection never once crossed my mind. I had too often done the same thing with impunity to believe that a day of reckoning would ever come, in this world at least, and I never gave a thought to the world to come.

After engaging with Captain Burr I went home to my wife at 129 Cedar street, and lying down on the bed, told her not to disturb me, as I wanted to take a long sleep, and if any one came for me,

to say that I was not in. She left me alone, and I then deliberately matured all my plans. I marked out the course I intended to pursue exactly, and after I had decided upon everything, I went to sleep and slept as soundly as ever I slept in my life, my mind was so much at ease, and I felt so contented at the idea of having at last an opportunity of making some money in an easy way. The next day I went on board and commenced my duties, and in order to ingratiate myself into the good graces of the captain, I did even more than could have been expected of me. We sailed on the sixteenth of March from the foot of Spring street, and proceeded to Keyport, where we remained till Sunday. While here, I scraped the mast of the sloop, did a lot of carpenter work, and evidently pleased Captain Burr very much by my earnestness in trying to make everything look ship-shape. We arrived at Gravesend on Saturday afternoon, and waited there for a fair wind. At last we put to sea, and when we were off the Ocean House, I went to the forecastle, and got an axe, which I put in the boat hanging to the davit aft. The younger Watts was at the helm, and I asked him to allow me to steer a little while. He consented, and went forward.

In a few minutes I left the helm, and taking the axe, went to him, and asked him if he saw Barnegat Light. He said he did not. I told him to look again, and pointed with my hand. He turned round and looked in my face a moment, but even if he had suspected my cruel purpose, he would have read no indication of it there, for I was as calm as though I were going to do the simplest and most innocent thing in life. Had I been under human influences, the confident and trusty way in which he turned his eyes to mine, would have made me hesitate, but no such thought entered my heart, and I pointed again and told him to "Look there; ain't that it?" He turned his head, and peered through the darkness in the direction I pointed, and as he did so, I struck him on the back of the head with the axe, and knocked him down. He fell! Thinking I had not killed him, I struck him again with the axe as he lay upon the deck.

His fall and the sound of the axe made some noise, which, added to that caused by my running across the deck, attracted the attention of the captain, who came up the companionway, and putting out his head, asked what was the matter? I replied, "nothing," and then asked him, as I had the younger Watts, "is that Barnegat light?" Captain Burr replied, "No, you will not see it for two hours;" and as he spoke he turned his head from me. The axe swung in the air, and, guided by my sinewy and murderous arm, came down. The edge crunched through his neck, nearly severing his head from his body, and killing him instantly. The body fell down the companionway.

As I turned to leap after it, and dispatch my remaining victim, I looked forward, and—Oh, God, how I shudder to think of it now! —he whom I thought I had already killed had risen and was coming aft, his hand outstretched toward me, and the blood running in two dark streams over his pale face, from two ghastly wounds on

his head. For a moment I stood undecided, but as he still came on, I ran toward him, but ere I reached him he fell about midships, and rushing on him, I struck once! twice! thrice! with the axe, and finished him. Running aft, I jumped down the companionway with the bloody axe in my hand.

There lay the elder Watts in his berth, and close beside him the ghastly, bloody corpse of the captain. I stood a moment looking at him, and dashed at him and struck out with the axe. He leaped out of his berth and sprang at me, all red with the blood of the captain, whose body had fallen past him, covering him with gore in its fall. He tried to grapple with me, but stepping back, I gave the fatal axe a full swing, and struck him again, again, and again, once upon the head, once on the back and once more upon the head, which felled him to the floor, and he lay dead at my feet, side by side with the captain.

My bloody work was done! Dead men tell no tales. I was alone. No eye had seen me, and now I was free to reap the reward of my work. I did not feel the slightest regret for what I had done, and went about removing the bodies, as coolly as though they had been so much old lumber. I took a rope and bent it on to the feet of the elder Watts, hauled him on deck, and threw him over the quarter. I then hauled the captain out in the same manner, and threw him over; and then going to mid-ships, I lifted the body of the younger Watts from the deck and plunged him into the sea by the starboard side. I then threw the axe overboard, and soon as I had done this, I changed the course of the sloop, and ran in close to the Hook. My intention was to run the sloop up the North River, and then fire her, but I came near running her on the Dog Beacon, abreast of Coney Island and Staten Island lighthouse, after which I fouled with a schooner, and carried away the bowsprit, so I put the money and such other articles of value as I could pick up, into the yawl, and then sculled ashore three miles, landing just below the fort on Staten Island.

My movements after landing are well known; and when I look back upon the fatality which seemed to dog my steps, it seems as though the fiend, who so long had stood by me in every emergency, had deserted me at last, and had left me to my own weakness. But I never thought of this until after my arrest. I had no shadow of a presentiment that I should be checked so suddenly and brought to justice, and on my return to New York, made arrangements to go away with my family as coolly as if nothing had occurred which should counsel me to use caution. But on that fatal night when I awoke from a deep sleep to find the officers of the law standing by my bed, for the first time fear overcame me, and I grew faint and weak as a baby. Great drops of sweat started out on my forehead and all over my body, and then I realized that at last the master whom I had served so long had really deserted me and abandoned me to my fate. But to all outward appearance I choked these feelings down, and none who saw me dreamed of what was passing within.

My task is done. I have related all the awful details of my life with as much minuteness as I can, and now nothing is left me but to prepare to die.

I ask no sympathy and expect none. I shall go to the gallows cursed by all who know the causes which will bring me there, and my only hope is that God will, in his infinite mercy, grant me that spirit of true repentance which may lead to pardon and forgiveness in the world to come.

THE EXECUTION.

July 13.

The scaffold which was sent from The Tombs to Bedloe's Island was erected upon a green sloping terrace on the north east side, giving upon the East River and Brooklyn.

Last night about midnight after an hour spent with Father Duranquet Hicks fell asleep and was awakened at four by one of the keepers.

At nine Marshal Rynders, accompanied by Sheriff Kelly and other city officials, entered the cell. Hicks was reclining on his bed at the time, and quietly arose as the officers entered the apartment. The Marshal then read the death warrant to the prisoner, and at its conclusion told the condemned to prepare himself for the approaching execution. Hicks immediately proceeded to array himself in a suit of blue cottonade, got up for the occasion. His coat was rather fancy, being ornamented with two rows of gilt navy buttons, and a couple of anchors in needlework. A white shirt, a pair of blue pants, a pair of light pumps, and the old Kossuth hat he wore when he was arrested, completed the attire. Hicks was exceedingly cool while engaged in arraying himself in this fancy suit, and unconcerned about his approaching doom. Questioned as to how he felt regarding the future world, he replied, as if fearing to express any hope, "that is a matter I would rather leave to *him*," referring to Father Duranquet, who sat at his side. "I am resigned," he said. "The Marshal has treated me very kindly: I will not say anything on the island."

At 9:30 the culprit marched out of prison attended by Father Duranquet, Marshal Rynders, Deputy Marshal Thompson and Sheriff Kelly, and took his seat in the first

carriage. The second carriage was filled with deputy sheriffs, and the third and fourth ones by the police and representatives of the press.

The journey from the Tombs to the pier at the foot of Canal St. occupied but a few minutes. The steamboat Red Jacket had been chartered by the United States authorities for the occasion. On it was already assembled a crowd of more than 1500. On the lower deck was a refreshment saloon and bar room; the day was warm and beer proved an excellent and cooling beverage. With considerable pushing and squeezing, the officers managed to convey their prisoner to the saloon in the after part of the boat, where he was free for a time from the gaze of the rabble. Hicks seated himself on a settee near the cabin window, and burying his face in his hands, apparently became engaged in deep meditation. Having expressed a desire to be left alone with the priest for a few moments, the officers and representatives of the press retired from the apartment, and proceeded to the saloon above. During all this time Hicks maintained his usual self-possession. He told Marshal Rynders that he wanted everything to be done as quickly as possible; that he did not intend to make any remarks on the scaffold. Subsequently he came from the cabin and looked from the windows on the river, evincing no show of feeling.

Steamboats, barges, oyster sloops, yachts and row-boats, swarmed everywhere in view of the gallows. They had come from all parts. From Connecticut, where the murdered captain and the brothers Watts belonged; from Long Island, where they were well known. Large steamers, such as carry hundreds of people away on pleasure excursions, were there, so laden with a living freight of curious people, that it seemed almost a wonder that they did not sink. There were barges there with awnings spread, under which those who were thirsty imbibed lager-beer. There were row-boats, with females of some sort, in them, shielding their complexion from the sun with their parasols, while from beneath the fringes and the tassels they viewed the dying agonies of the choking murderer. But most conspicuous of all, and most regarded,

was the sloop E. A. Johnson, on which the murders were committed. Newly painted, she stood well into shore, her stern not three hundred feet from the gallows, with a huge burgee flying from her top-mast head, on which her name was painted in large red letters. Her deck was crowded, her masts and spars were alive with human beings.

The small boats on the water crowded with men and boys covered several acres; the steamboats with their spectators crowding to the island side seemed to sink to the water's edge, the masts of all the vessels were black with sailors.

As the boat neared the pier, Marshal Rynders impressed upon the crowd the necessity of preserving order and obeying the instructions of his officers. The police, he stated, were to go ashore first and take up their position at the scaffold, and then the crowd were to follow four abreast. Finally, all being in readiness, the procession started from the boat in the following order: The culprit, supported on either side by Father Duranquet and Deputy Sheriff Isaacs, Marshal Rynders, Deputy Marshal Thompson and Sheriff Kelly, Deputy Marshals De Angelis, O'Keefe, Theodore Rynders, Thompson, Donnell, Wilson, Dugan, Clackner. The physician's staff consisting of Doctors Woodward, Thompson Weltje, Bell, Phelps, Barry, Kennedy and Church. The representatives of the press, numbering about fifty. Deputy sheriffs, city officials, and spectators. Police.

As the procession passed to the pier, Major John B. Hall, who had charge of the military arrangements, advanced with a platoon of marines, and forming a line on each side of the pier, allowed the procession to pass up to the shore. Here the cortege was flanked on each side by troops which had been sent from Fort Hamilton and Governor's Island for the purpose; and as the end of the procession passed over the side of the boat the military closed in behind and formed a hollow square all the way up to the foot of the scaffold.

The procession reached the foot of the scaffold at ten minutes past eleven o'clock. The culprit immediately knelt on the grass, and for a moment or two was engaged in prayer. He then rose slowly, and, facing the fleet of vessels which

were anchored within a few feet of the shore, gazed intently on the vast throng. While thus engaged in surveying the exciting scene, his eye caught the burgee of the identical oyster-sloop E. A. Johnson. He gazed at the flag for a moment, as if in recognition, and then, lowering his eyes, looked long and earnestly upon the vessel and its crew. The sight did not seem to shake him in the least, however, for he remained firm and indifferent to the very last. At length the fatal moment arrived, the executioner is observed to place the rope around the culprit's neck, the black cap is drawn over the unfortunate wretch's face, the Marshal takes his position beside the criminal, sword in hand, the fatal signal, the waving of a handkerchief, is given, the axe descends, and the next moment the body of the pirate is seen dangling between earth and heaven.

For the first three minutes the culprit struggled severely, but after that he appeared to suffer little or no pain, and died comparatively an easy death. At eighteen minutes past eleven his limbs began to relax, and the absence of any muscular contraction denoted that the executioner's work was well-nigh over.

A moment afteward there was a short convulsive twitch of the shoulders, all was still, and the body becomes perfectly motionless, except when moved to and fro by the wind.

Eleven minutes after the rope had been cut, the body was lowered and the doctors pronounced life to be extinct. It was deemed advisable to let the body remain suspended for some time longer; so the corpse was raised again to its original position, and allowed to remain there until a quarter to twelve.

Hicks made no speech on the gallows. His only words were "Hang me quick: make haste."

The body was lowered and placed in a coffin and landed at the Custom House dock. His widow through some mistake waited for it at another place accompanied by a priest, so it was interred in Calvary Cemetery, without her knowledge.

Before the body was taken down, most of the excursion boats had started home.

The collection of small boats also began soon to break up, and immediately after the body was removed, the sails were unfurled, the rowers took their oars and the fleet quietly dispersed. The Red Jacket, with the policemen and the same crowd of passengers it brought up, was one of the last to leave.

The Red Jacket made a short excursion up the river as far as Spring St., and returning, down stream, landed her passengers at Pier No. 1.

THE TRIAL OF BENJAMIN SHAW, JOHN ALLEY, JR., JONATHAN BUFFUM AND PRESERVED SPRAGUE, FOR DISTURBANCE OF PUBLIC WORSHIP AND RIOT. IPSWICH, MASSACHUSETTS, 1822.

THE NARRATIVE.

Three members of the congregation of the Society of Friends or Quakers as they are commonly called, at the town of Lynn in Massachusetts had been regularly suspended or "disowned" from the church by the governing authorities. But they not only persisted in attending the services but in causing great disturbance and disorder by their conduct.

The Quaker meeting houses are separated into two divisions, one for the male, the other for the female members; these are long benches on the floor. Then there is a gallery about six feet above called the "raised seats" which by immemorial usage is reserved for the ministers, elders and such venerable members of the Society as are invited to sit there by the officers of the church.

At the service one morning, Shaw, Buffum and Sprague and likewise Alley who was still a member but who sympathized with the others, insisted on sitting on the raised seats and had to be forcibly ejected by the overseers which caused a great disturbance and much excitement. They repeated this the next Sunday and made even more trouble. Alley appeared with a sword and Buffum when ordered to leave called the officials very hard names and it was not until they had been pulled with force from the "high seats" which they again occupied without authority, that they were ejected from the church.

Indicted for disturbing public worship and riot, three of

them pleaded that they had a right there as they had never been legally suspended. But the court ruled that this was immaterial, whether they were still members or not made no difference as no one had a right to be a rioter in a church building or to disturb a congregation engaged in religious service. One of the prisoners, Alley, when called on to plead, showed that he was so devoid of sense that the Commonwealth's lawyer dismissed him from the indictment on the ground that he was insane; and another, Shaw, the jury found not guilty for the same reason. But Jonathan Buffum and Preserved Sprague were convicted by the jury and though sentenced by the judge to pay a fine only, they were told by him that if their offenses were repeated the law would fall on them much more heavily.

THE TRIAL.[1]

In the Court of Common Pleas of Essex County, Ipswich, Massachusetts, March, 1822.

HON. SAMUEL HOWE,[2] *Judge.*

March 16.

The grand jury had previously returned an indictment against Benjamin Shaw, Cordwainer, John Alley, Jr., Trader, and Jonathan Buffum and Preserved Sprague, Painters, all of Lynn in the County of Essex, for a riot and the disturbance of public worship. In the first count they are charged with

[1] *Bibliography.* *Trial of Benjamin Shaw, John Alley, Junior, Jonathan Buffum, and Preserved Sprague, for riots and disturbance of public worship, in the Society of Quakers, at Lynn, Massachusetts, before the Court of Common Pleas, held at Ipswich, Massachusetts, March 16th, 1822. [Salem: Published by Cushing & Appleton, 1822.]

[2] HOWE, SAMUEL (1785-1828). Born, Belchertown, Mass.; prepared for college New Salem and Deerfield academies; grad. Williams Coll., 1804. Studied law with Jabez Upham, Brookfield, Mass., and in law school Litchfield, Conn., under the joint guidance of Chief Justice Reeves and Judge Gould. Admitted to bar 1807. Began practice in Stockbridge, Mass., but removed to Worthington, Mass., 1818, and, later to Northampton 1820 where he was partner of Elijah Hunt Mills. Judge Common Pleas Court 1820-1828. In 1823, with his partners, Mills and John Hooker Ashmun he opened a law

a riot in willfully disturbing and interrupting the Society of Friends in their meeting house by intruding into and seizing the minister's gallery, on February 17, 1822. The next three counts charge them with willfully disturbing the Society of Friends when met for public worship the same day and with rude and indecent behavior; the fifth count charges them with a conspiracy to disturb the society and the sixth count charges them with a similar riot on February 14, 1822.

Mr. James C. Merrill[3] and *John Pickering*[4] for the Commonwealth; *David Cummins*[5] and *Leverett Saltonstal*[6] for the prisoners.

The Clerk. What have you to say to this indictment: are you guilty or not guilty?

school at Northampton, Mass. Fellow of the Am. Acad. Arts and Science. Died in Boston. See Davis, (W. T.), Bench and Bar of Mass., 1895. Parker, (I.), Address of Chief Justice Parker to the Bar of Suffolk at a meeting [Jan. 22] for the memory of Hon. Samuel Howe. Boston Recorder Jan. 25, 1828. Am. Acad. Arts and Science. Memoirs (list of members). Williams Coll., General Cat. 1910. Clark, (S.), Antiquities. historicals and graduates at Northampton, 1882.

[3] MERRILL, JAMES CUSHING (1784-1853). Born, Haverhill, Mass. Ed. Phillips Exeter Acad.; grad. Harv. 1807. Studied law with John Varnum, Haverhill. Admitted to bar at Salem, 1812; Suffolk Co. bar, 1815. Occupied a prominent position as a lawyer in Boston. Justice of Boston Police Court 1834-1852. Member of Senate and House of Representatives (Mass.) at various times. Member of Mass. Hist. Soc. Was a Greek scholar of high attainments. Died in Boston. See Davis, (W. T.), Bench and bar of Mass., 1895. Harv. Quinq. Cat., 1915. Puritan Recorder, Oct. 6, 1853. Chase, (Geo. W.), Hist. of Haverhill, Mass., 1640-1860—1861. Vital records of Haverhill, Mass. Mass. Hist. Soc. Proceedings, 1835-1855, p. 561-563.

[4] See 6 Am. St. Tr. 599.

[5] CUMMINS, DAVID (1785-1855). Born, Topsfield, Mass. Grad. Dartmouth Coll. 1806; studied law with Samuel Putnam, Salem. Admitted to Bar 1809. Began practice in Salem; afterwards removed to Springfield and finally to Dorchester. Many distinguished men studied law in his office, among them Rufus Choate. Judge of Court of Common Pleas 1828-1844. Died in Dorchester. See Davis, (W. T.), Bench and Bar of Mass. 1895. Dartmouth Coll. General Cat. (1769-1910)—1911. Hurd, (D. H.), Hist. Essex Co. 1888. Copeland, (A. M.), Hist. of Hampden Co. 1902. Topsfield, Mass. Vital records 1903. Topsfield Hist. Soc. Historical collections, Vol. V, 1899. The name is spelled Cummings in the last two references.

[6] See 6 Am. St. Tr. 599.

Shaw. I am not guilty of anything but going into the high seats.

Alley. I am guilty and not guilty.

Mr. Cummins requested Alley to plead not guilty.

Alley. I shall say what I have a mind to. I can answer no otherwise than that I am guilty and not guilty, that is all I can say about it—it takes two to make one.

Buffum. I acknowledge no guilt—I am not guilty.

THE COURT. Alley you can say as Buffum did, you acknowledge no guilt.

Alley. I am guilty; you must make as much of it as you can.

THE COURT ordered the plea of not guilty to be recorded for Alley.

Mr. Pickering said that from the appearance of Alley and the indications of insanity which were so obvious he considered it his duty to enter a nolle prosequi to the indictment against him which was accordingly done.

The Clerk then informed Alley that he was discharged and he left the bar.

The Jury were then called and empannelled, as follows: Jabez Farley, Foreman, Ipswich; Amos Brickett, West Newbury; Nathan Choate, Essex; John Davis, Beverly; Richard Dodge, Beverly; Nathaniel Foster, Newburyport; Israel Foster, Boxford; Samuel B. Graves, Salem; Cutting Moody, Haverhill; Oliver Appleton, Ipswich; Josiah Brown, Ipswich; Thomas Perkins, Newburyport.

MR. MERRILL'S OPENING.

Mr. Merrill: Gentlemen of the Jury: The prosecution against the respondents at the bar has been commenced for an offense of rare occurrence, and to the commission of which there can be little inducement or temptation. This offense is the riotous and wilful disturbance of a religious society when assembled for public worship. Every individual claims the right of worshiping GOD without molestation according to the dictates of his own conscience; this is a natural right recognized in the declaration of rights, and confirmed by the statutes of the Commonwealth. The second article of the *Declaration of Rights,* prefixed to our Constitution, is in these words:—"It is the right, as well as the duty, of all men in society, publicly and at stated seasons, to wor-

ship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshiping GOD in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship." The Legislature has declared in the 7th and 8th sections *of the Act providing for the due observation of the Lord's day,* that if any person, either on the Lord's day, or at any other time, shall wilfully interrupt or disturb any assembly of people met for the public worship of GOD, within the place of their assembling, or out of it; and further, if any person shall on the Lord's day, within the walls of any house of public worship, behave rudely or indecently, the offender shall be subject to a fine. An act of the Legislature was not necessary to constitute this a penal offense, for it is undoubtedly a misdemeanor at common law. It has been expressly held by our highest tribunal that disorderly behavior even in town meetings is an offense at common law.

The respondents are charged in the indictments, that have just been read to you, with wilfully disturbing a society of Friends or Quakers. This quiet and peaceful sect has never obtruded on the public notice its peculiar tenets and organization, either for the purpose of gaining proselytes or for ostentation. As frequent allusions to their peculiarities will be made by the witnesses in the course of the present investigation, a brief outline of their form of government and modes of discipline becomes necessary for the clear understanding of the evidence.

All the Quakers that reside in the New England States constitute one voluntary association, called the society of Friends; all their real estate and meeting houses are held in trust for the common use and benefit of the society; the particular society that usually worships in the Friends' meeting house in Salem have no other title to it than the society at Lynn, or Seabrook. The portion of the general society that dwells in the vicinity of a meeting house and usually wor-

ships in it, is denominated a *particular society,* or *preparative meeting:*—two or more particular societies within a convenient distance from each other meet once a month and constitute a *monthly meeting:*—two or more monthly meetings meet quarterly and form a *quarterly meeting:*—and all the quarterly meetings assemble annually in the sixth month, in Rhode Island, for the care and management of the spiritual and temporal affairs of the general society. The yearly meeting has jurisdiction over all the acts of the quarterly meetings—the quarterly over the monthly—and the monthly over the preparative.

Each monthly meeting chooses annually two or more of each sex to be *overseers,* and one or more of each sex to be *elders,* in each *particular* meeting. The duties of these elders are similar to those of the elders of congregational churches, and the duties of the overseers are analogous to the congregational parish committees.

Few sects adopt so many precautions as the Friends to prevent the intrusion of immoral and unqualified persons into their ministry; no person is a regular *minister* of the society until *approved* as such successively by the monthly, quarterly and yearly meetings. Every member may indeed speak in the meetings, until admonished by the elders or others that his preaching is unprofitable on account either of the style, elocution, or doctrines. To preach or exhort after advice to desist, is a breach of the order of the society.

The Friends, like all other religious societies, under every system of religion, whether human or divine, claim and exercise the natural right of enforcing discipline for self-government and self-preservation; this society has laws, privileges and usages, positive and written, or implied and traditional, which it guards from abuse and violation by the sanctions of admonition and expulsion. Offenders, who are too obdurate and refractory to be reclaimed by admonition and persuasion, are excluded from the privileges of the society by excommunication or *disownment.* That the Friends have exercised the right of disowning from the time of George Fox, the founder

of the sect, is proved by this extract from Clarkson's Portraiture of Quakerism:

"The Quakers conceive they have a right to excommunicate or disown; because persons, entering into any society, have a right to make their own reasonable rules of membership, and so early as the year 1663, this practice had been adopted by George Fox, and those who were in religious union with him. Those who were born in the society are bound of course to abide by these rules, while they continue to be the rules of the general will, or to leave it. Those who come into it by convincement are bound to follow them, or not to sue for admission into membership. This right of disowning, which arises from the reasonableness of the thing, the Quakers consider to have been pointed out and established by the author of the christian religion who determined that if a disorderly person, after having received repeated admonitions, should still continue disorderly, he should be considered as an alien by the church."

A member disowned by a monthly meeting has the right of appeal to the quarterly meeting; if the decision is there affirmed, he may further appeal to the yearly meeting, and the disownment may be reversed on appeal either for error in fact or in the mode of proceeding; but until reversal, the person disowned is bound to submit to the subsisting judgment.

The meeting houses of the Friends are separated into two divisions, one for the males, the other for the females; all the members, except the ministers and elders, sit in perfect equality on the long benches on the floor of the house: in each house there is an elevated seat or gallery in which the ministers and elders are accustomed to sit, facing the meeting: this gallery is sometimes called the *raised seats,* is 5 or 6 feet above the floor, and is elevated for the purpose of enabling the elders to watch over and preserve the order of the meeting, and the ministers to be heard when speaking. By immemorial usage, in all the meetings, these seats have been appropriated to the accomodation of the ministers, elders, and such other venerable and respected members as have been in-

vited by the officers of the society. It is not pretended that any positive written rule exists to this effect; but it is generally and clearly known in this society what description of persons have a right, and are accustomed to sit in the ministers' gallery, as it is among Congregationalists who are entitled to sit in the pulpit or deacons' seats.

The respondents are charged in the first count in the indictment with a *riot,* in wilfully disturbing and interrupting this society by forcibly intruding themselves into and seizing the ministers' gallery. The late Chief Justice Sewall, in course of a trial in this county, took occasion to remark that people in general had very indistinct and erroneous notions of the nature of this offense, and that it was time they should know what a riot was. A riot may be committed without clamor, tumult, or commotion, or bloodshed, or actual violence; it may be committed in perfect silence—in silence portentious as the calm that precedes a storm. A riot is a disturbance of the peace, by three or more persons, assembled with intent mutually to assist each other against any who shall oppose them in the execution of a lawful or unlawful enterprise, and afterward executing the same under circumstances tending to violence. When three or more co-operate and assist each other in executing an unlawful purpose, in committing a breach of a law, as in the present case, the violence, tumult and terror of the people, so often mentioned in the books, are supplied by construction and intendment of law, in odium of committing crimes by force of numbers; the circumstance of three or more co-operating in a breach of the peace is sufficient to deter a peaceable individual from interposing to restrain the offenders from the commission of the offense, for there is just ground to apprehend forcible resistance from those who are already engaged in violating the laws. Sir James Mansfield, in a case which arose from the O. P. controversy at Theatre Royal, Covent Garden, (2 Camp. 369. Clifford v. Brandon) held that "if any body of men were to go to the theatre with the settled intention of hissing an actor, or even of damning a piece, there can be no doubt that such a deliberate and perconcerted scheme

would amount to a *conspiracy,* and that the persons concerned in it might be brought to punishment. If people endeavor to effect an object [even a lawful object] by tumult and disorder, they are guilty of a *riot.* It is not necessary, to constitute this crime, that personal violence should have been committed, or that a house should have been pulled in pieces. The law is, that if any person encourages or promotes, or takes part in riots, whether by words, signs or gestures, or by wearing the badge or ensign of the rioters, he is himself to be considered a rioter, and he is liable to be arrested for a breach of the peace. In this case, all are principals." The respondents must be convicted of the offense charged in the first count, if you are satisfied from the evidence that three or more of them being assembled, mutually assisted and encouraged each other in the commission of this wilful disturbance, under circumstances tending to violence.

In the three next counts the respondents are charged with the offenses of wilful disturbance of the society of Friends, when met for public worship, and with rude and indecent behavior. They must be convicted on these, if the government satisfies you that they wilfully committed any act that frustrated the purpose for which the society assembled; for the meeting houses of all sects are sanctuaries in which parents, children, the aged and infirm, have a right to assemble for meditation and devotion, without even the fear of turbulence or annoyance.

The fifth count charges the respondents with a *conspiracy* to disturb this society. This crime is perpetrated whenever two or more confederate to do an act prejudicial either to the public or individuals, or to do a lawful act by unlawful means, whether the confederates afterward proceed to execute the act, or not: even the *inciting* of another to commit a breach of the law is a misdemeanor; "God forbid" said Lord Kenyon, "that this should not be considered an offense in a country professing to have laws, morals and religion."

The sixth count charges them with a similar riot on the 14th Feb. to which the principles of law I have before stated will apply.

It will be proved to you that all the respondents have been accustomed to worship as members of the Friends' meeting at Lynn; for a few months past, these with a few other malcontent members of the society have disturbed the meeting by irregularly seizing the ministers' gallery, and under pretense of preaching, insulted their brethren by uttering profane, coarse and opprobrious language. Three of them have been disowned, and denied the privileges of the society; the specific charges against them, for which they were disowned, cannot by law be investigated on this trial, as the society has exclusive jurisdiction of the violations of its orders and rules. I mention the fact only as part of the evidence to show the defendants acted together in these disturbances, having a common cause of dissatisfaction. Whether they were, or were not members of the society, the acts with which they stand charged, were equally unlawful and unjustifiable. Though the defendants had been thus disowned, and had forfeited the right of worshiping with that society, they persisted in their irregular and disorderly conduct and at length committed such outrages and extravagances that the Friends' society was compelled either to appeal to the civil authorities for the protection that is guaranteed to all, or to abandon and desert the place in which they and their fathers have been accustomed to worship.

WITNESSES FOR THE COMMONWEALTH.

Isaac Bassett. Was one of the elders and overseers of the society of Quakers in Lynn. On account of the disturbances which had lately taken place on the morning of the 14th February the committee advised us to take a stand against the disorderly conduct. At 11 the meeting for religious worship commenced. Benjamin Shaw was sitting in the minister's gallery. There is a movable partition about the middle of the house which is raised during the meeting for public worship and lowered when they proceed to their civil concerns. The minister's gallery consists of two seats, one above-another; the highest is raised five steps from the floor of the house; endeavored to persuade Shaw to come down but could not succeed; told the meeting that the overseers considered it improper for Shaw to take that seat; again invited him to come down but he declined. I said he could not be admitted to sit there agree-

able to the usage of the society and that his conduct was peculiarly improper as he had been disownd the month previous. Called on Jacob Chase and Daniel Silsbee to remove him; he braced himself against the railing and split the seat. They placed him on a seat on the floor; he refused to sit still; one person sat on each side of him to keep him quiet. Chase and Silsbee removed him as far as the broad aisle; they were interrupted by Caleb B. Alley, son of John Alley, advancing in a fighting attitude. It took several to secure Alley and prevent his obstructing the others in taking Shaw out. There was great confusion. Abijah Chase had his hat knocked off. They at length succeeded in removing Shaw. John Alley, Jr., came in and went to the aisle towards the high seats; the committee endeavored to prevent him but he screamed very loud, crying out, "Let me go by." Soon after John Buffum passed into the high seats and spoke to the meeting in a very indecent manner. At the meeting for business Jonathan Buffum and Preserved Sprague were disowned.

Mr. Merrill read from the rules of discipline:

"It is the ancient and constant sense of Friends, that any person denied by a monthly meeting, is adjudged as disowned by Friends, and to stand and remain in that state, till by his repentance, or by the reversal of such denial by a superior meeting, he is reconciled to Friends or reinstated in membership among them, with which this meeting hath unity, and therefore, confirms the same. 1727."

Bassett. On the morning of the 15th met John Alley with his sword. I advised him to take it off. He said, "You have imposed upon us. It is now victory or death—I shall carry this sword to meeting and if you meddle with or impose upon us I shall run you through as quick as wink." I said, "John will thee do such a thing as that?" He said, "Yes, I will." February 16th the overseers concluded to warn them against further disturbance. February 17th I endeavored to convince Buffum of the impropriety of his conduct in taking the gallery seat. He said, "I shall do as I think best; we will be as strong as you are." What I heard him say in the meeting was: "You that profess to be Quakers, Christians, have shown forth by your conduct the fruit of your hell-born principles this day." And again, "Not because you are Quakers but because you are sons of Belial." And again, "You thirst for our blood, you want to feed upon us; this I call spiritual cannibalism."

At the next meeting Buffum entered the door soon after me and then John Alley, Jr., with a sword. When he got to the first seat of the gallery I clasped him around the waist so as to

confine his arms. I heard several voices saying, "let him alone," and told the people to take notice. John's wife and son said the same but said nothing of his being crazy. Others took away his sword and I let him go. He then went up into the minister's gallery. Saw Johnathan Buffum, Benjamin Shaw and Jacob Purinton up there. Daniel B. Alley ran up there. He and Shaw were both desired, when they came into the meeting, to take their seats on the floor of the house. Alley absconded very soon but the others continued there during the meeting. The meeting was very large. Many boys and other persons belonging to other societies. John Buffum was the first of the disorderly persons who came in. I requested him to take his seat on the floor. He said he would sit where he pleased and passed into the minister's gallery; Daniel B. Alley, also, though cautioned not to go. Shaw passed up into the second seat of the gallery. They were all cautioned except John Alley, Jr., who made a great noise by screaming. Johnathan Conner, Samuel Neal and Micajah C. Pratt were requested to remove Shaw; they carried him out. I requested three others to remove Buffum. While they were so doing John Alley, Jr., cried out, "Let him alone, don't touch him upon the peril of your lives." He moved up towards Buffum and appeared to assist him in keeping his seat. When they were removed into the aisle, there was great confusion. Many got into the aisle, and nearly filled it up. One said, that was too bad, and stepped out to prevent their being removed. I requested Daniel Newhall to move out of the way. He said *I won't.* Joshua Wilder, a stranger, was speaking and making a noise. I requested him to be silent. He said *I won't.* A number of others crowded forward. I had much difficulty in saving myself from being plunged out of the door. I saw Buffum and the others carried out and removed to a neighboring house, where I went to see that they were well taken care of; I then returned to the meeting, and found it pretty quiet. All the defendants have been in the habit of worshiping at the Friends' meeting house. Sprague had never been in the ministers' gallery.

Cross-examined. The overseers are appointed to treat with disorderly Friends. If they report unfavorably the persons complained of are disowned. They then have a right to appeal. Buffum and Sprague were disowned at the meeting on the fifth day, the 14th. Shaw had been disowned at the meeting previous. John Alley, Jr., has never been disowned.

THE COURT. If the evidence already offered was true the conduct of the defendants amounted to a riot, whether they were regularly disowned or not. Evidence of the regularity of the proceedings of the society in this respect is irrelevant.

Mr. Cummins. It is important to ascertain whether they were regularly disowned. If the counsel for the government would admit that the defendants were still regular members of the society

of Friends and that it was lawful for them to take the high seats they would agree that they had no right to take them in a violent manner. We expected to show, that it has been the custom of the society never to take a vote, and that there never was an instance of a person's being disowned against the will of any members; in other words, they never act over the heads of other members. The committee of the quarterly meeting were not regularly appointed, because there was no request for their appointment from the monthly meeting; and the defendants never were regularly disowned according to the usages of the society, but on the contrary were still entitled to the privileges of members, because the clerk of the meeting declared that he should pay no regard to the opinions of those who did not agree with the committee and the body of the society, and that according to the mode of proceeding the defendants might have been disowned by a small minority only.

Mr. Merrill. We had not considered it important to inquire into the regularity of the society's proceedings. The fact of the defendants being disowned came out incidentally in the course of the inquiry. If the proceedings were not regular, the defendants had a right to appeal; but until the sentence is reversed they have no rights as members of that society.

If they considered themselves aggrieved, they ought to have adopted the regular course to obtain redress; but if, instead of so doing, they determined to redress themselves by violence, they were guilty of a riot. A riot may exist without an actual tumult; it may be committed without noise. Would any person hesitate to call it a riot, if a number of persons should in silence take possession of the Judge's bench, and persist in holding it? It is the combination of the prisoners with others, in attempting to assert their pretended rights by force, which constitutes the offense charged against them.

THE COURT ruled that they could not go behind the proceedings of the monthly meeting, it was immaterial, whether the defendants were regularly disowned or not. Even if they considered themselves aggrieved at the proceedings of the society in disowning them, and forbidding them to occupy the ministers' gallery, yet if the evidence offered by the government against them is believed, they were guilty of a riot. A settled minister of a congregational society would be guilty of that offense if he should go with two or more of his friends to take possession of his pulpit by force against the will of the society. If three or more undertake to accomplish a lawful act in an unlawful manner, they are guilty of a riot or conspiracy. The law will not permit persons to redress their wrongs by violence.

Mr. Basset. The high seats are called the ministers' gallery; only one minister and three or four elders occupy those seats; others sometimes occupy them when invited; ministers and elders generally invite those whom they think fit. No others go there except when the meeting is crowded and then they go merely to make room; no minister was excluded from the

seats by defendant. John Alley, Jr., has contributed largely to the support of the society; he does not regularly attend meeting; he has been sometimes absent for six months; he would remain quiet at meeting if suffered to do as he pleased; he is not disowned but is under the notice of a committee. Defendants made disturbance in taking the seats. They did not appear disposed to offer violence if they were not interrupted.

Mr. Saltonstall. Have not persons other than ministers, elders, or overseers sat in the high seats every Sabbath since the 17th of February without any disturbance of public worship?

Mr. Merrill. It is true several had since that time been guilty of the same offense as the defendants. Several had gone to meeting with an expectation of being carried to prison for their disorderly conduct and had made preparations for that purpose; their going there was with a view of furnishing evidence for this trial.

THE COURT. The proposed inquiry is not admissible.

Mr. Basset. I am an elder but do not sit in the high seat. It is the privilege allowed to any member of society who has something to say to rise in his seat and speak but not to go into the minister's seat. When their speaking is not satisfactory to Friends it is their duty to be silent and if they are not silent it is disorderly.

Mr. Saltonstall. Are persons not understood by Friends to speak from the immediate influence of the spirit without any preparation? Were Buffum's expressions like the sermons often delivered in the Friend's meeting houses? According to their principles no preparation is to be made, but when anyone has a strong impression on his mind it was his duty to speak?

THE COURT. This inquiry is immaterial unless the persons who thus spoke usually went into the high seat. (To Basset.) Was it considered regular for anyone who wished to speak to go into the high seats?

Basset. No; enough elders, ministers, aged and honorable persons attended the monthly meethings to fill those seats.

Dr. Rowland Green. Belong to the society of Friends; am a physician; have been minister in society eighteen years. By the usages of society the high seats are appropriated for the ministers, elders, overseers and the venerable and worthy. It depends upon the ministers, overseers and elders to determine who constitute the venerable and worthy. The usage is the same throughout the country. The interior of all the meeting houses are constructed in the same way. First saw Shaw at a yearly meeting at Newport, Rhode Island; was struck with the singularity of his conduct in going to the high seat; he was removed. Next saw him at Lynn last summer. He obtruded himself into our committee meeting. Told him his company was not wanted and led him out of meeting. He then came in at another door and was led out again. At last all the doors were fastened. Next day saw him about the

meeting house yard, he looked pale and distressed; took his pulse which was languid; felt a compassion for the young man. He said that he did not sleep well, that his appetite was poor; conversed with him about his obtruding himself into our meeting. Believed his case might be a species of insanity. Next time saw him at quarterly meeting at Seabrook. He was then no more deranged than several others who appeared to be combined to disturb the meeting. He seemed to be in unison with others in a conspiracy. Shaw told me he was not disowned but that there were a few in the monthly meeting who were under the influence of the devil and he spoke often in a reviling and abusive manner. Saw nothing like insanity except the above disorderly conduct. Saw him afterwards at a private house. He had no appearance there of insanity. He walked the room and threw out harsh expressions.

Obadiah Brown. As to the high seats, none are allowed to sit there except ministers, elders, overseers and such others as are considered as having the concern of society at heart. Was at the meeeting at Lynn on 14th of February. It was a noisy, disturbed meeting. Confirm what Basset said respecting it.

Cross-examined. The overseeers do not always sit in the high seats but their business is to sit there if so disposed. Those seats are never taken by young persons except in very crowded meetings. The seats on the floor of the house are common to the whole society but not the minister's gallery.

Samuel Breed. Was present on 14th and 17th of February. Was requested by the overseers to assist two others in taking Jonathan Buffum out of meeting. Preserved Sprague took hold of my coat which was kersey, and pulled back so hard that I was obliged to let go and was shoved out at the door.

Daniel Silsbee. On the 17th February my brother and I were requested to take John Alley, Jr., out of the high seats. Basset and others were endeavoring to clear the way. As many as ten or twelve were concerned in endeavoring to prevent us.

Mr. Cummins. Did you not attempt to carry Shaw out on 10th February?

Mr. Cummins expected to prove that Shaw was removed from the meeting on Sunday the 10th, and carried to the work house, without any authority. He and his friends therefore thought they had a call, a spiritual impulse, to go to the high seats, and bear testimony against this oppression. This mode of bearing testimony is according to the ancient usage of the people called Quakers. They acted conscientiously in going to those seats, and testifying against their being set apart for any particular portion of the society.

Mr. Merrill. It was not competent for the defendants to make this inquiry. It was impious arrogance and blasphemy in them to set up any inspiration to justify them in violating the laws. If they can prove themselves evil spirits, mere air, in that case they may

go unpunished; but as long as they are palpable, something that we can see and feel, and confine within bars and bolts, they are amenable before the civil tribunals to the laws as human beings, and must be punished in the flesh for those sins of the spirit which lead them to commit such outrages upon the community.

Mr. Saltonstall. The defendants believed they had a right to occupy those seats. They did not know them by the name of the *ministers' gallery.* Their object in going there was to *bear testimony* by that act against what they considered an usurpation. The Quakers have been always remarkable for their singularities; they are a peculiar people; they are in fact a community by themselves. The conduct of the prisoners in taking possession of those seats was not more singular than the conduct of George Fox, who was in the habit of going into the houses of other religious societies, or *steeple houses* as he called them, and inveighing against them for their idolatry. The persons now complained of have been in the habit of reading the books which contain accounts of those peculiarities. They felt it a duty to go to meeting, not by combination or violence, but quietly, and take those seats, and thus show that in their opinion they were not more sacred than other parts of the house; and that Shaw had been harshly treated, in being forcibly taken from the house the Sunday previous.

THE JUDGE. No person felt more respect for the society of Quakers than himself; but they must be judged by the same laws as other citizens. Objection to the testimony offered was, that instead of tending to exculpate the defendants it went to convict them of another riot. It may be true they had no intention of committing any crime; but if they went to meeting with a determination to support Shaw in taking possession of those seats, this act of theirs was criminal; the inquiry proposed by the defendants' counsel was improper.

Squiers Shove. Am one of the committee appointed by the meeting of Salem and Lynn to wait upon Shaw and treat with him on account of his misconduct. He did not incline to treat with us as a committee but would converse with us as neighbors. John Alley and Shaw said they would fight as long as they had a drop of blood in their bodies. Buffum was present. He said nothing but smiled and appeared to assent to their remarks. This was on 12th of February. On 15th Buffum and Shaw came to my house; Buffum said the old order would be glad to settle for $5,000; said they had got six or seven stout men and if they were not sufficient a captain of militia in Lynn had offered to turn out his whole company; that they had got a number of able generals and a strong body to overset the old order. I confirm the statement of Basset as to the occurrence. Buffum and John Alley came in about the time of taking Shaw out. Philip Chase of Lynn and another person tried to prevent his being removed.

Cross-examined. Thought there would be bloodshed. My wife has staid away from meeting for two months. Shaw's character is that of an ignorant,

wilfull creature. Do not know much about Buffum. Sprague has the character of being peaceable and orderly.

Ichabod Nichols. I and Ezra Collins were a committee to wait upon Jonathan Buffum. We told him we wished to know if he would treat with us. He declined. Squiers Shove was there.

Buffum said we might return to the meeting and tell them they had sent us upon a Tom Fool's errand. John Alley, Jr., was present. He said we were leagued with the devil. Talked very loud, and in a threatening manner. Shaw and others came in. Alley said they were going to fight. Shaw said they would fight as long as they had a drop of blood. Buffum said that if they were of the same disposition as we were, there would be blood shed. The elders and ministers only are entitled to sit in the ministers' gallery. Never knew of other persons sitting there till within a few months.

Micajah Collins Pratt. Was present at the meetings of the 14th and 17th of February and confirm the statement of Isaac Basset. Jonathan Buffum was standing at the porch. John Alley came with his sword; he stept up the aisle. Jonathan Buffum had his umbrella raised when Alley was seized by Basset. Preserved Sprague said, "*Let that man go up.*" Buffum said, "*Let him go up, let him go up, I say.*" Buffum stept over several seats to the high seat. We had to cut the belt before we could take the sword away. Alley's wife and son said, "*Let him go up.*" I said, we will not be trifled with by letting a man go up there with a sword. She said, we ought to be trifled with. Daniel B. Alley forbad our taking the sword from John. Daniel then seated himself with Shaw. In the afternoon was one of those appointed by Basset to remove B. Shaw; John Alley forbad my touching him. Buffum said, "*Let him alone, he is a peaceable man.*" There was a great noise, and the women were much frightened.

David Hawks. Was present on 17th February and stood alongside of young Abel Houghton who said, "*Crowd up and stop the door so that they shall not get them out.*" Told him not to say those words again or he would be prosecuted as a rioter. Houghton cried out again to shut the door, took hold of half of it, and with others shut it. Several cried out, "*Mob! Mob!*" They were taking out Alley, Shaw and Buffum at this time. The riot act was read in the street by the Deputy Sheriff; 150 persons were present.

James Purinton. On 17th February warned Jonathan Buffum and B. Shaw not to go into the gallery seats. On the evening of 16th the overseers concluded not to suffer them to go there. The minister's gallery is appropriated to the ministers, elders, overseers and others whose life and conversation answer to their profession.

Philip Chase. Have always belonged to the society of Friends. The high seats are exclusively appropriated to ministers, overseers and elders. Persons sitting there face the congregation. Was at the meeting on 14th February; confirm the statement of Isaac Basset. When they were removing Shaw, Caleb

Alley rushed forward using very profane language. He had his arms raised and said "By God" or "my God you shall not carry him out."

Micajah Collins. Have been a minister of society nearly twenty years. The usage respecting the high seats is the same as stated by the other witnesses in all the societies from Maine to North Carolina. Others besides ministers, overseers and elders occasionally sit there but not usually. On common occasions the highest seat is unoccupied. It is considered disorderly for young persons to occupy them except when the house is crowded and they cannot get seats elsewhere.

Mr. Cummins. Gentlemen of the Jury: I am apprehensive that in consequence of the great variety of testimony, a mistake will arise as to the parties charged in this prosecution. Many persons besides the defendants have been alluded to as confederates; but the defendants are not answerable for the acts of other persons. Your attention should be confined simply to the parties indicted; and the only question for your consideration is, whether they are guilty of the offenses specifically alleged against them.

The defendants are all charged with a riot. In order to constitute this offense, three or more must co-operate. They must assemble with intent mutually to support each other in the execution of an unlawful enterprise, or of a lawful one in an unlawful manner.

Before you can convict the defendants, you must be satisfied that they occasioned the disturbance. We contend that they did nothing which neccessarily tended to a breach of the peace. They are not answerable for the disturbance which took place, unless you are satisfied that they occasioned it wilfully.

THE COURT. If the defendants intended to do the act which amounted in law to a disturbance, they are answerable, whether they considered it an offense or not.

Mr. Cummins. This was the first instance which had been known of a prosecution for a disturbance in the Friends' meeting house. In weighing the conduct of the defendants, the Jury should consider what are the usages of this society. An act may amount to a disturbance in one society, which

would not be so considered in others. Suppose a person should go into a congregational meeting with his hat on, and rise in his seat to address the meeting: These acts would be disturbances; but it would be quite otherwise in the Friends' meeting. We say that there was nothing unusual or extraordinary in the conduct of the defendants on this occasion. They did nothing, except taking the high seats. Now if taking possession of those seats was not extraordinary, you must say that they did nothing to excite a disturbance. The meeting houses in Friends' societies are all held in common; there is no assignment of seats; on the contrary, people are seated promiscuously. All have equal rights in their houses, and no seats are more sacred than others. No confusion occurred till an attempt was made to remove them. But they are not accountable for the subsequent confusion, provided they were justified in taking those seats. They are not answerable for the act of John Alley in carrying the sword. He was an insane person, and the government have acknowledged it by discharging him. We shall show also that Shaw was at this time deranged. This indeed appears already from one of the government's witnesses. With respect to the other defendants, we shall show that they support good characters. They have not been considered as disturbers of the peace, but are quiet and good citizens. Unless then they were guilty of an offense in taking a seat in the meeting house which they did not consider appropriated to any particular persons, and if this was not an unusual transaction at that meeting, you must find them not guilty.

THE WITNESSES FOR THE PRISONERS.

Dr. Hazeltine. Been acquainted with Benjamin Shaw five years. Have always considered him very modest and diffident, but at times inclined to derangement. For the last three months he has been partially deranged. A man may be perfectly correct with respect to every operation of his mind, except upon some particular subject; and he may be deranged in the same manner. Very many subjects produce derangement, such as love, fear, revenge, religion. The latter has a powerful effect. Shaw's character is that of an inoffensive man. He appeared for a considerable time under a great excitement about religion. On one oc-

casion, last September, his conduct was very singular when I met him. He held out his hand, and said how do you do, Friend Hazeltine; I have nothing to say to thee, but I thought I would stop to tell thee so—I have nothing more to say now; so good bye. Whenever I met him before, he appeared rational, but he then appeared otherwise.

Cross-examined. Had not much intercourse with Shaw for the last three months. Had not been called to visit him as a physician. Shaw's friends did not consider him deranged. Had frequently visited the Friends' meeting. Did not consider it the practice for persons to sit promiscuously in the high seats. Sprague and Buffum are upright and peaceable men. There is nothing exceptionable in their conduct but their religious excitement.

Abel Houghton. Was present at the Friends' meeting on 14th February. Basset said to me, "We conceive that B. Shaw is improperly in the high seat." He was sitting there alone, peaceably. Chase and Silsbee went to take him down. In getting him down they let him fall, I suppose accidentally. Silsbee put his hand round his throat. Shaw said, You may as well cut my head off as choke me to death. Basset said, "Take him out." I never heard the name of ministers' gallery till within a few weeks; they are usually called the high seats: they are commonly occupied by ministers and elders; but others sit there occasionally and in two instances I have known persons sit there, who did not belong to the society. Sometimes the ministers take their seats on the floor of the house, but they usually take the high seats.

Shaw was present at a funeral last fall. He said, with a laugh, "If a beast dies, you would not make such a fuss; you had better take the old man off." After the procession was formed, he said, "you look very nice; if you had music, you would make a fine appearance." Shaw is considered a harmless person. Sprague and Buffum's characters are good; I never heard them charged with any improper conduct.

Edward Southwick. Heard Shaw address Chase in the plural language which he had not been used to do. Till within a year had never heard him use any profane or improper language.

Thomas Arnold. Benjamin Shaw appeared to be a very serious young man and one of few words. He had some degree of depression owing to religious excitement; was very talkative and there was a peculiar turn in his eye which attracted my attention. There was a wandering levity in his manner which satisfied me that he was deranged.

Samuel Philbrick. Am acquainted with Benjamin Shaw; was very serious when he first became a member of our society; have known him to sit a whole evening without speaking; discovered a wildness in his manner. Told me he had an idea of taking his own life, he said he thought it was his duty. He often made communications in meeting which I consider improper and some of his observa-

tions none could justify; I have considered his eccentricities as proceeding from derangement. He has repeatedly come into my house and laid down upon the floor half an hour at a time. Sprague and Buffum's characters are good.

William B. Breed. Am acquainted with Shaw. Think his character the same as related by the others. The characters of Sprague and Buffum are good.

Josiah Clough. Shaw observed to me two or three months ago, that he was determined to pull the old order down, for they were a stiff, arbitrary set. Saw nothing in him like insanity.

Mr. Merrill said the records of the Friends' society were in Court, by which it would appear that the defendants had been regularly disowned.

THE COURT said that they could not examine into the regularity of those proceedings, inasmuch as it was not material whether the defendants had been regularly disowned or not.

THE JUDGE'S CHARGE.

JUDGE HOWE. Gentlemen of the Jury: The defendants stand charged with several offenses, which are specified in the indictment. In relation to the main facts in the cause, there is no controversy: the testimony of the first witness introduced by the government stands uncontradicted.

The principal charge against the defendants is for a riot, in seizing and occupying the ministers' gallery in the Friends' meeting house at Lynn. This charge will attract your chief attention, because it is an offense of a more serious nature than the others. A riot is defined, "A tumultuous disturbance of the peace by three persons or more, assembling together of their own authority, with an intent mutually to assist one another, against any one who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful." If this definition is to be relied upon, it is of no consequence whether the defendants had or had not a right to take those seats. The only question is, whether they went with a determination to take possession of them by force.

That three or more were concerned, there is no doubt. You have it in evidence that several others abetted the defendants, by which they all became equally culpable. The defendants were warned by committees, who acted under the sanction of the society, not to take those seats; but they went there, notwithstanding. Buffum stood at the door, looking out, as if waiting for Alley. He was there when Alley came with his sword, and then followed him into the seats. The other defendant, Shaw, did the same. If Alley was sane, there is no question, but that in so doing he committed a breach of the peace. It was the same as to those who assisted him, and in consequence of their connection they were guilty of a riot.

Basset says, that he requested them to come down, because they disturbed the meeting. Several took hold of Shaw to remove him. He resisted, and injured the seat. Alley clung to him, to prevent his removal. This is evidence of a concert. It is immaterial whether they had a right to those seats, or not. If they went there with an intention to take the seats, and to resist any attempts to remove them, it must be considered a riot. Was their conduct tumultuous? There can be no doubt it was a breach of the peace, even if it had been on any other day. If in our society three or more persons should go to take possession by force of the pulpit, deacon seats or singing seats, it would be considered a riot. The law upon this subject is not generally understood. Persons may commit a riot in attempting to assert their rights. The law will not permit individuals to use force in such cases, but it requires them to surrender the power of redressing their wrongs into the hands of the government.

The only question between the parties seems to be, whether the defendants had a right to take those seats. But this is not material as to the first charge against them, for a riot. It is material however as to the three next charges, which are simply for disorderly conduct, and behaving rudely and indecently. There is no question but that these are offenses at common law. It has been decided by our courts, that disturbing a town meeting is such an offense; and the law is un-

doubtedly the same for disturbing a religious society. You will therefore inquire whether the people were assembled for public worship, and if the defendants were guilty of disorderly conduct in taking those seats. It is said by their counsel that the mere taking the seats was no disturbance of public worship; but the question is, whether it had not a tendency to disturb the peace. It is said, that there is no written regulation respecting the seats. But the same may be said of our pulpits. It is universally understood that the pulpit is appropriated for the minister; but there is no written rule upon that point, nor is it the case that none but ministers ever sit there: it is not uncommon for deaf persons to sit there; and in some places, where there is no settled minister, sermons are read from thence by other persons. The general usage however in our societies is well understood. It is common for example to have certain places in the singing seats reserved for ladies, but if rude young men should intrude themselves into those seats they might be punished for disorderly conduct, though there is no law or written regulation to forbid their taking them.

You will then inquire, if it was agreeable to the regular usage of the society for the defendants to take the seats in question. Did they go to an improper place. If their conduct was irregular, you must find them guilty upon the second, third and fourth counts. But if it was not irregular, you must find them not guilty upon those counts. Upon this point the evidence is uncontradicted, that it is not usual for persons as young as the defendants to take those seats. One of their own witnesses testifies that he considered Shaw's taking them (at Providence) as a mark of derangement.

The defendants are charged in the fifth count with a conspiracy. If they had predetermined to take those seats, you must convict them upon this count; as it is the previous concert which constitutes the offense. Several persons have testified as to what took place previous to the meeting. You will recollect the testimony as to the threats of John Alley, and connect it with the conduct of Buffum in standing in the porch, waiting for him. If you have any doubt as to the

previous agreement of the defendants, you must acquit them; otherwise you will find them guilty.

The sixth count is for a riot on the 14th February. You have it in evidence, that the defendants, Shaw and Buffum, went to the seats on that day. The same remarks therefore apply to this count as to the former. I have proceeded thus far upon the supposition of the defendants' being of sound mind.

With respect to Shaw, it is contended by his counsel, that he was deranged. You will recollect the testimony upon this point. It is barely necessary to remark, that the evidence of his derangement ought to be gathered from other facts than those with which he stands charged, unless his conduct upon that occasion was so extraordinary that no person in his right mind would be guilty of it. The burden of proof is upon the defendant, to satisfy you of his insanity, as every person is presumed to be sane till the contrary is proved.

The other defendant, Sprague, is indicted for the like offenses only on the 17th Feb. The evidence against him is much less explicit, than against the others. It does not charge him with going there with a predetermination to take the high seats, but only with aiding and abetting the others when there. One person testifies, that he cried out, Let this man go up; and he resisted one of those persons who was carrying out Shaw. It is not necessary that there should have been a previous concert, to convict Sprague upon the charge of a riot. If, at the moment when he saw a breach of the peace take place, he aided and abetted in it, he is guilty. The degree of guilt may be very different; but that is only to be considered by the Court in passing sentence. If he was merely present, and assented to the conduct of others by an overt act of encouragement, as in the case cited of a person who merely suffered an emblem O. P. to be put in his hat by other rioters, he was guilty, as an accomplice, of the same offense. As to the second count against Sprague, for disorderly conduct, this depends upon the question, whether the others had a right to take the seats. If they had no

right, he must be found guilty upon this count. His expressions tended to encourage the others. If he had been silent, or if he had used discouraging expressions, perhaps no tumult would have ensued.

As to the third count against Sprague, for a conspiracy, I do not recollect any direct evidence of his being concerned in the previous concert. Unless you recollect some, you will acquit him of this charge.

You have heard evidence as to the character of the defendants. In criminal prosecutions it is always the right of the persons charged to introduce such evidence, and it is competent afterwards for the government to rebut it by contrary testimony. In doubtful cases, or in prosecutions for infamous offenses it has great weight; but in cases like the present it is not so important. It requires the strongest evidence to prove that a person of fair character has been guilty of a theft, for instance; and in such case evidence of his good character would be very important. But in the present case the defendants did nothing which they conceived tended to destroy their reputation; they considered that they were only asserting their legal rights. With regard to their *intent*, it is not necessary that they should have intended to break the laws: the only question is, whether they intended to do the acts charged against them; and if they did, they are guilty of the offenses for which they stand indicted.

THE VERDICT AND SENTENCE.

The *Jury* retired and in about two hours returned with a verdict of *Guilty* on all the counts against Jonathan Buffum and Preserved Sprague, and an acquittal of Benjamin Shaw, by reason of insanity.

Mr. Saltonstall stated, in mitigation, that Buffum was a mechanic of little property, with a family, and Sprague entirely destitute of property, with a large family of children, one of whom had been born since the father was imprisoned.

Mr. Merrill said he was expressly instructed by the prosecutors to declare that this prosecution had been commenced not from any vindictive motives, but from necessity and for self-preservation; that a few days before the session of this Court, several members of the society had visited the defendants in prison and proposed to them, if they would simply give assurances that they would

in future abstain from a repetition of these disturbances of the meetings, no complaint should be made against them to the grand jury; such assurances however could not be obtained. Even now the society wished the Court would impose as light a punishment as should be deeemed consistent with the duty of the Court and the ends of justice.

THE COURT. The facts now suggested by the defendants' counsel, as well as the testimony to their general good character, and the probability that their offenses had arisen from a delusion or misconception of their rights, would have due influence in measuring the punishment—Buffum was sentenced to pay a fine of *One Hundred and Fifty Dollars* and Sprague *Seventy Five Dollars.*

THE COURT admonished the prisoners, that if these offenses were repeated by them or their associates, the arm of the law would fall much more heavily on them.

THE TRIAL OF JOHN Y. BEALL FOR VIOLATION OF THE RULES OF WAR AND ACTING AS A SPY. NEW YORK CITY, 1865.

THE NARRATIVE.

During the civil war the United States had a prison camp on Johnson's Island on Lake Erie and the war vessel Michigan was kept in commission near by. On the evening of September 18, 1864, Bennett G. Burley[1] who had been a captain in the Confederate Navy went on board the Philo Parsons, a steamship plying between Detroit and Sandusky, Ohio, touching at the Canadian ports, Amherstburgh, (Malden) and (occasionly) Sandwich, a few miles below Detroit, and told the clerk that he intended to go down as a passenger next day and had three friends at Sandwich who were to go with him, and arranged that the boat should call there for them.

At Sandwich the next morning John Y. Beall[2] boarded the

[1] He was born in Glasgow, Scotland, and was the head of the Lake Erie Expedition. See President Davis's Proclamation, post p. 702. On his return to Canada he was arrested at Guelph and ordered to be extradited on a charge of robbing Ashley, the clerk of the Philo Parsons of a twenty dollar Treasury note. He escaped, became celebrated as a war correspondent under the name of "Burleigh" and died on June 17, 1914. The proceedings in his case in the Canadian Courts at Toronto will be found in 1 Upper Canada Law Journal, 20-34.

[2] JOHN YATES BEALL who was a native of Virginia and of a leading family, was born January 1st, 1835. A student for three years at the University of Virginia, he was a devout member of his church and exemplary in his life. When the war broke out he joined the forces of his State and fought in her cause, being wounded in the first year of the conflict. Later he went to Upper Canada and lived at Dundas for some time. While there he conceived the bold scheme he afterwards attempted to carry out. On his return to Richmond his plan was approved; but the time was not thought favorable, and Beall for a time operated as a privateer upon the Chesapeake, etc. He was taken prisoner and confined at Fort McHenry, but was afterwards released. The Confederate Secretary of

boat with two others and further on at Malden twenty-five other men got on board. All the baggage they had was a very old trunk tied with a rope. Then the boat proceeded on its way to Sandusky; she called at Kelly's Island (Ohio) and was about two miles away from there when the trunk was opened disclosing revolvers and hatchets, and the men who had boarded the boat at the Canadian ports armed themselves and took forcible possession of the steamer, making prisoners of the passengers and crew. They opened the baggage-room with an axe, threw overboard the freight, then headed the boat to Middle Bass Island (Ohio) about ten miles from shore. After a few minutes the steamboat Island Queen came alongside and made fast. The armed party went aboard her and made prisoners of all (amongst them some twenty-five unarmed American soldiers going to Toledo to be mustered out of service); brought them to the Philo Parsons and then put all the prisoners from both boats ashore on the island. Beall and Burley forced Ashley, the clerk, to give them the money he had on board, about one hundred dollars. The Island Queen was then scuttled and set afloat; she drifted for two or three miles, struck a reef and sank.

More than one of the conspirators had told the passengers that they intended to capture the Michigan and then, liberating the prisoners on Johnson's Island, destroy the commerce on the lakes. This was not attempted; the Philo Parsons was abandoned and the Southerners scattered.

Beall reached Canada again in safety but in December he joined Colonel Martin, Lieutenant Headley and Private Anderson, all formerly of Morgan's command on the railroad track near Buffalo trying to lift a rail, but failing in their object. He then went back to Canada but several nights later was joined by another confederate soldier and the

the Navy then determined to try Beall's suggested scheme on Lake Erie. In March, 1863, Beall was appointed as Acting Master in the Navy of the Confederate States. He made his way to Canada, where at that time there was an active Southern colony in Toronto, headed by Colonel Jacob Thompson. There the scheme was hatched. (Riddell, W. R., p. 16.)

five made another abortive attempt to wreck an approaching train, though they succeeded in lifting a rail and placing it across the track. This was ostensibly for the purpose of affecting the rescue of some Confederate Generals who it was believed were being removed from Johnson's Island to Fort Warren. The engine struck the rail but no harm was done. Beall and Anderson were arrested the next night at the Station at Niagara Falls where they were waiting for a train to Canada. Beall was taken to New York City and there in jail he made an attempt to effect his escape by bribery.

Beall was brought before a Court Martial of Military officers. Anderson turned State's evidence. The charges were two: 1st, "Violation of the laws of war," with six "specifications," and 2d, "Acting as a spy," with three. They were based on the Philo Parsons and Island Queen episode, and the attempt to destroy the train between Buffalo and Dunkirk. He was convicted on both counts and on February 24th, 1865 was hanged on Governor's Island.

THE TRIAL.[3]

Before a Military Commission, New York City, January, 1865.

Brig. General FITZ HENRY WARREN,[4] *President.*[5]

[3] *Bibilography.* *"Trial of John Y. Beall, as a Spy and Guerrillero, by a Military Commission. New York: D. Appleton and Co., 1865."

*"A Court Martial Fifty Years Ago." (William Renwick Riddell) 50 American Law Review, 15.

*"Memoir of John Yates Beall; his Life, Trial, Correspondence, Diaries and Private Manuscripts, found among his Papers; including his own Account of the Raid on Lake Erie. Montreal: Printed by John Lovell, St. Nicholas St., 1865." Though published anonymously the author was Judge Daniel B. Lucas, Beall's close personal friend and fellow student.

Appleton's Cyclopaedia of American Bibliography and The Americana. In these two publications his second name is Young, a clear mistake, for Yates was his mother's name. His surname was pronounced "Bell".

[4] WARREN FITZ HENRY (1816-1878). Born Brimfield, Mass.; grad. Wilbraham Acad. Removed to Burlington, Ia., 1847 where he engaged in business. Asst. Postmaster General, 1849; Chairman Nat.

January 25.

The Commission which assembled today at Fort Lafayette, New York Harbor, was appointed on January 17 by Major General Dix.[6] The trial was postponed until February 1st.

February 1.

The Trial began today.

Major John A. Bolles,[7] Judge Advocate; *James T. Brady,*[8] for the Prisoner.

Rep. Convention, 1856; member editorial staff of New York Tribune, 1861, but retired to become Colonel of 1st Iowa Infantry; was successively Brigadier-General, Brvt. and Major General; mustered out Aug. 1865. State Senator, Des Moines Co., Ia., 1866; Minister to Guatemala, 1867. Later engaged in literary work at Washington, D. C., and New York City (where he was writer for the N. Y. Sun); Editor, for a time, of the Burlington (Ia.) Hawkeye. Engaged in railroad building in Iowa following which he returned to the East; died Brimfield, Mass. See Stiles (E. H.) Recollections and Sketches —1916. Appleton Cycl. Amer. Biogr.—1915.

[5] With him sat Gen'l W. H. Morris, Colonel M. S. Howe, Colonel H. Day, Brev. Lieut. Col. R. F. O'Bierne, Major G. W. Wallace.

[6] Dix, John Adams (1798-1879). Born Boscowan, N. H. Served in war of 1812; studied law and practiced at Cooperstown N. Y. 1828. Superintendent of Schools and Secretary of State 1833-1840. Member Assembly, N. Y. 1842. United States Senator, 1845-1849. Secretary of the Treasury 1861. Major General U. S. Volunteers 1861-1865. Minister to France 1866-1869. Governor of New York 1873-1875.

[7] Bolles, John Augustus (1809-1878). Born, Eastford, Conn.; Grad. Brown Univ., 1829. Admitted to bar (Boston), 1833. Secretary of State (Mass.), 1843. Member Harbor and Back Bay Comm. 1852. From 1862-65 served as Judge-Advocate on staff of General John A. Dix, his brother-in-law (successively Captain, Major, Brevet Lieut-Colonel and Brigadier General.) In Navy Department, Washington, D. C., as Judge-Advocate and Solicitor until death there. See Appleton Cycl. Am. Biogr.—1915. Wash. Direct.—1865-1878.

[8] See 12 Am. St. Tr. 497. Mr. Clinton says: "Extraordinary Cases" (N. Y. 1896).

Among the New York lawyers of Irish parents, but American born, the most conspicuous were Charles O'Conor and James T. Brady; both alike in being great lawyers, but wholly unlike in their chief characteristics and personal appearance. Mr. O'Conor was tall, well proportioned, with little remarkable in his general appearance, except that his countenance usually wore an extremely thoughtful expression. Mr. Brady was short, rather small, well proportioned, except his head, which was very large and out of

He was arraigned on the following charges and specifications, which were read aloud in his presence and hearing, and to which he pleaded *not guilty.*

CHARGE 1st. *Violation of the laws of war.*

Specification 1. In this that John Y. Beall, a citizen of the insurgent State of Virginia, did on or about the 19th

proportion to the rest of his figure. On account of the great size of his head Mr. Brady could only wear a hat made especially for him. Any one who, for the first time, saw O'Conor engaged in an argument or trial would recognize him as a man of decided ability, deep study, thoroughly prepared for the work he had in hand, wholly absorbed in his case, but otherwise not presenting a very imposing appearance. One who first saw Brady thus engaged would be struck with his dignified and commanding appearance; attention would be at once riveted upon his massive head. He possessed a striking figure, which would command marked attention anywhere. His serene and captivating manner would indicate extreme confidence in the merits and success of his case. Mr. O'Conor's manner would indicate anxiety as to the result, and a determination to do everything in human—or legal—power to achieve a victory for his client. Their habits in respect to preparation for trial presented an extraordinary contrast. Mr. O'Conor spared no labor in the preparation; all the work was performed or supervised by him, even to the smallest detail. Nothing could exceed the thoroughness of his preparation upon the law and the facts. It seemed almost impossible that any other lawyer could prepare as thoroughly as he did. Mr. Brady's habits were the reverse; he went to the very opposite extreme. In the early part of his professional career, it was said, he was quite studious. But afterwards, and especially during the last twenty years of his life (he died in 1868, when fifty-four years of age), as a rule he made no preparation for trial. When consultations were appointed for those on his side of the case, he failed to attend them, but on the morning of the commencement of the trial he promptly appeared in Court. As soon as the trial had started he gave close attention. He was quite likely to learn, for the first time, something about the side he represented when the case was opened to the jury by the Attorney or Junior Counsel associated with him. After the trial had progressed a little he would grasp, as if by intuition, the leading features and the turning-points of the case; and any one who did not know to the contrary would suppose that he had made as much preparation as Mr. O'Conor before trial. Mr. O'Conor succeeded by reason of his almost superhuman assiduity in preparing his case. Mr. Brady succeeded in spite of his indolence and lack of preparation. Mr. O'Conor was a good speaker; Mr. Brady was a born orator. In

day of September, 1864, at or near Kelly's Island, in the State of Ohio, without lawful authority, and by force of arms, seize and capture the Steamboat *Philo Parsons.*

Specification 2. In this that John Y. Beall, a citizen of the insurgent State of Virginia, did on or about the 19th day of September, 1864, at or near Middle Bass Island, in the State of Ohio, without lawful authority, and by force of arms, seize, capture and sink the Steamboat *Island Queen.*

Specification 3. In this that John Y. Beall, a citizen of the insurgent State of Virginia, was found acting as a spy at or near Kelly's Island, in the State of Ohio, on or about the 19th day of September, 1864.

Specification 4. In this that John Y. Beall, a citizen of the insurgent State of Virginia, was found acting as a spy on or about the 19th day of September, 1864, at or near Middle Bass Island, in the State of Ohio.

Specification 5. In this that John Y. Beall, a citizen of the insurgent State of Virginia, was found acting as a spy on or about the 16th day of December, 1864, at or near Suspension Bridge in the State of New York.

Specification 6. In this that John Y. Beall, a citizen of the insurgent State of Virginia, being without lawful authority, and for unlawful purposes, in the State of New York, did in said State of New York undertake to carry on irregular and unlawful warfare as a guerrilla; and in the execution of said undertaking, attempted to destroy the lives and property of the peaceable and unoffending inhabitants of said State, and of persons therein travelling, by throwing

addresses to juries and public assemblages the one was powerful; the other was magnetic. In public addresses, when Mr. O'Conor closed, the audience would, with considerable enthusiasm, applaud. When Mr. Brady wound up his speech the entire audience would yell, "Go on! go on!" and continue to yell so long as there was the faintest possibility that their demands might be complied with. In large political meetings, when Brady was to speak, the managers would put him down as the last speaker in order to hold the audience; for the vast crowds assembled would wait to hear Brady if they had to remain all night. He was the pet and idol of the Bar, as well as of public assemblages.

a train of cars and the passengers in said cars from the railroad track, on the railroad between Dunkirk and Buffalo, by placing obstructions across said track; all this in said State of New York, and on or about the 15th day of December, 1864, at or near Buffalo.

CHARGE 2d. *Acting as a Spy.*

Specification 1. In this that John Y. Beall, a citizen of the insurgent State of Virginia, was found acting as a spy in the State of Ohio, at or near Kelly's Island, on or about the 19th day of September, 1864.

Specification 2. In this that John Y. Beall, a citizen of the insurgent State of Virginia, was found acting as a spy in the State of Ohio, on or about the 19th day of September, 1864, at or near Middle Bass Island.

Specification 3. In this that John Y. Beall, a citizen of the insurgent State of Virginia, was found acting as a spy in the State of New York, at or near Suspension Bridge, on or about the 16th day of September, 1864.

THE WITNESSES FOR THE PROSECUTION.

Walter O. Ashley. Am clerk and part owner of the steamboat Philo Parsons. On Sunday, 18th of September, about six p. m. I was on the steamboat at the boat's dock in Detroit, she being a boat sailing from Detroit to the City of Sandusky, touching regularly at the Canadian port of Amhurstburgh and occasionally at Sandwich. Mr. Bennett G. Burley came aboard the boat, said he intended to go down as a passenger in the morning to Sandusky, that three friends were going with him, and he requested that the boat would stop at Sandwich, a small town on the Canada side of the river below Detroit and take on those three friends as passengers. I agreed providing Burley would take the boat himself at Detroit and let me know for sure that his friends would be ready to come on board at Sandwich, that the boat would call for them. He then went away. Next morning the boat left Detroit at eight with freight and passengers. Burley came to me and reminded me of my promise to stop the boat at Sandwich. Captain S. F. Atwood was in command of her but he stepped off at Middle Bass Island where he resides. I told Captain Atwood that the boat would have to stop at Sandwich and he stopped and took these three friends of Burley at Sandwich. The accused

was one and there were two others. They were all dressed in citizens' clothes, they had no baggage; they were very gentlemanly in their appearance, said they were taking a little pleasure trip—might stop perhaps at Kelly's Island—did not know exactly where they would go; paid their fare to Sandusky. At Malden, Amhurstburgh, Canada West, about fifteen miles further down the river, about twenty-five men came on board, they all paid their fare, also. All the baggage brought on board by the party was a very old trunk, a rope tied around it. It was taken in at the after gangway of the boat by two of the roughest looking subjects in the party; most of the party were roughly dressed in citizens' dress. It was about half-past nine in the morning when we left Amhurstburgh. Everything passed off quietly until about four in the afternoon. The boat had just left Kelly's Island, six miles from the American shore on Lake Erie. We were about two miles from Kelly's Island towards the American shore and four miles off the Ohio main shore. The mate was sailing the boat; he was sailing master; I was in charge of the affairs of the boat. I was standing on the main deck in front of the office and the ladies' cabin; the passengers at this time —there were about eighty, nearly half of whom were ladies— were in the upper cabin. Three men came up to me, drew revolvers and levelled them, and said if I offered any resistance they would shoot me. They were three of the party; the accused was not one of those three, neither was Mr. Burley at this time. Bennett G. Burley came from the forward part of the boat aft, followed by fifteen or twenty. Burley had a revolver in his hand and levelled it at me and said, "Get into that cabin," meaning the ladies' cabin, "or you are a dead man." He commenced counting, "one, two, three," at the same time. He had not counted a great many, before I was inside the door; two men were stationed outside of the door, for the purpose of keeping me in the cabin, with revolvers in their hands; the party gathered around the old trunk; the cords were cut, the lid taken off, and they armed themselves from that with revolvers and hatchets; most of them had two large revolvers, and a portion of them hatchets; they then took forcible possession of the boat, and made prisoners of all on board. I could look out through the door on the main deck and see every thing that was going on. Bennett G. Burley had charge of this deck at the time. Burley with an axe which he found on board smashed the baggage room door open—then smashed the saloon door; he then went with the axe, smashed the trotting sulky to pieces, which was thrown overboard; he then with the men under him commenced to throw the freight overboard, consisting of household goods, tobacco and iron; about an hour after the capture of the boat, Capt. Beall, came to me and asked me if I was in charge of the office, of the boat's papers. I told him I was. He then said he was in charge of the party, and wanted the boat's papers,

and I went into the office and gave him the papers, and he took them and carried them away. I made a request that he would not destroy the steamboat. He said something to the effect that if I was a United States soldier, or United States officer, and had seized any of *their* vessels, that I would probably destroy the vessel. He did not say to me that he was a Confederate States officer—some of the others did say so; said the party were Confederate States soldiers, and that the expedition was in charge of Confederate States officers. Directly after the capture the boat was headed down the lake; directly off from her course for Sandusky; then turned around and ran up the lake to Middle Bass Island for the purpose of wooding, and also for the purpose of putting the passengers ashore.

Middle Bass Island is in the State of Ohio, about ten miles from the shore. She had been lying there about fifteen minutes when the steamboat Island Queen came alongside; she is a steamboat that runs from Sandusky to these islands with freight and passengers both, making the round trip every day. The party that were then in charge of the *Philo Parsons* went aboard the *Island Queen*, seized her, made prisoners of all on board, and brought them all on board of the *Philo Parsons* as prisoners; part of them were put in the cabin of the *Philo Parsons*, and part of them were put into the hold. The passengers of both boats were afterwards all put ashore on Middle Bass Island. Captain Beall came to the door and said: "Ladies you will have to go ashore now, as we are agoing to use this boat." I went back, to pick up my books and papers; Capt. Beall came back and Burley with him; they said they were going to allow me to go ashore; I asked permission to take the boat's books; Capt. Beall said I should not take them, that I should not take any thing belonging to the boat; I then said I had some private promissory notes in an envelope and requested leave to take them; Burley said: "Let me see them." I produced them; he looked at them, said he "could not collect them," and gave them to me. Capt. Beall then said: "We want your money." I opened the money drawer, in which there was very little money, perhaps eight or ten dollars; they took that out. Burley then said: "You have more money; let us have it." I put my hand into my vest pocket and took out a roll of bills of about $100, and laid it on the desk; I then requested again that I might be allowed to take the books, but they refused to let me take them; I was then put ashore.

The roll of bills was taken between them; Capt. Beall and Burley took the roll of bills, and also took the money out of the drawer; they took it between them; they both made a demand for the money. I then went on shore. After I had been on shore about half an hour, the boats were started in the direction of Sandusky; they were alongside lashed together. About two or three miles out I noticed the *Island Queen* drifting from the *Philo Parsons;* it afterwards

proved that she was scuttled; she drifted about four miles, and drifted on to a reef and was afterwards raised; she was nearly full of water when she was raised.

Cross-examined. Never saw Burley or Beall before they came on board the *Philo Parsons.* Burley was spokesman for the whole party. I did not pay any attention to Beall until after the capture of the boat. He did not tell me that he was a Confederate States officer. The two men that were guarding me after the capture of the boat, that stood outside of the door, said that they were Confederate States officers and soldiers and that they intended to capture the United States steamer Michigan and release their friends on Johnson's Island, and others said the same thing. Had supposed Burley was in charge of the party until Captain Beall came to me and requested me to give him the papers; he then said he was in charge of them. Beall said: "If you were a United States officer and had seized one of our boats, you would probably destroy it." There were no shots fired; they were presented at me and they said if I offered any resistance they would shoot me. Am sure I saw Beall have a revolver at the time he was in the office when the money was delivered. Burley, at the time of the capture of the boat, before they had made the general seizure of the boat and made prisoners of all on board, drew his revolver and told me to get into that cabin or he would shoot me. I did not see Beall for an hour or an hour and a half before the capture of the boat. He was in citizen's dress like the other two persons who came on board; Captain Beall said in the first place: "We want your money" and Burley said: "You have more money, and let us have it." They did not take any papers except such as belonged to the boat. I made a demand for those notes as my personal papers and they gave them up.

When the *Island Queen* attached herself to the *Philo Parsons* there were about twenty or twenty-five unarmed United States soldiers going to Toledo to be mustered out of the service; they were in uniform. They were taken as prisoners with the rest of the passengers and were put into the hold with the rest of the passengers. They were put ashore before I was; they were put ashore at Middle Bass Island, the place where I was put ashore.

The President. State whether there was any military or naval mark or badge on the accused while he was on board the *Philo Parsons.* There was not; they were dressed as citizens, in citizens' dress, and paid their fare as passengers, and were treated as passengers. Did Burley and Beall divide the money in any way, which you took and laid in a roll of bills on the desk? They were taking the money when I left; I laid it on the desk, and they were taking the money; they both made the demand, and were both taking the money between them. I saw them taking the money between them and dividing it.

Mr. Brady. The soldiers on board the *Island Queen* were unarmed? Do you know whether

there were any arms on board of this vessel? There were not; not to my knowledge.

During any part of the time you were on board after the capture of the *Philo Parsons*, was any flag displayed by this party? Not while I was on board.

Did they not display a flag afterwards to your knowledge? Not to my recollection.

William Weston. Have been a fireman for the last five years. Saw Captain Beall on board the *Philo Parsons* on the 19th of last September. I was a passenger; he said they were not going to hurt or harm any of us, and that they would land us as soon as they thought fit; he also stated that he was an escaped rebel prisoner from Johnson's Island, and that they had taken the boat for the purpose of capturing the United States vessel *Michigan;* they were going to liberate the prisoners on Johnson's Island, and were going to destroy the commerce on the Lakes.

After the boat was seized did not see them do anything with the freight; they threw out one of my boxes that I got afterwards on the beach, that was pitched out. They pitched one of my boxes into the water. Beall was dressed in citizen's clothes. Could not say whether he was the person or not, but I heard somebody called Captain Beall.

Cross-examined. I was brought down to Fort Lafayette to point out Captain Beall. I did so when I saw him. Did not point out another and a different man who proved to be a man named Smedlay.

David H. Thomas. Am a police officer; arrested the accused in the depot of the New York Central Railroad at Niagara City on the 16th of December last, about nine at night, with a young man calling himself Anderson. They had a small carpet bag—contents, a dirty shirt, a shirt that had been worn, a pair of socks, some five or six tallow candles that had not been burned, some matches done up in a paper and a box partly full of paper collars. He had a bottle of laudanum in one of his pockets.

Had on citizen's dress with an overcoat and cap. He had one of Colt's in a sheath attached to his body by a belt under both his coats. While searching him I asked him his name and he said Beall. A few minutes afterwards I asked him again with a view of learning his initials; he then said his name was W. W. Baker. I said he told me his name was Beall and he denied it. He had one ten dollar Canada note and he had some five or six dollars in American money or scrip. He asked me what I arrested him for. I said he knew probably as well as I did. He said he did not. Finally told him I arrested him as an escaped rebel prisoner. He asked if from Point Lookout; I told him it was, that he was an escaped prisoner from Point Lookout. Said he, "That I will acknowledge; I am an escaped prisoner from Point Lookout." He said after he escaped from Point Lookout he made his way to Baltimore and he had friends in Baltimore who had furnished him with money to go to Canada. Asked which of them owned that bag and the young

man said the accused owned the bag, which he denied. They said those candles were a necessary article to use when they could not get other lights. In regard to the laudanum, his answer was, that he was subject to the toothache. He said it was fortunate that I arrested him suddenly as I did; that he had been in prison so much that he had made up his mind, whenever he was attempted to be arrested again; and on this particular occasion, had I not taken him as quick as I did, that one or the other of us would have been a dead man—that he had fully resolved never to be taken alive.

Cross-examined. Mr. Saule, another policeman, was with me. He said that he belonged to the Second Virginia Infantry, was a sergeant in the ranks. I asked him if he held any other position, and he said, no.

February 2.

Edward Hays. Am doorman at the Police Headquarters, Mulberry Street. Accused asked me to carry a letter out for him and have it mailed; said he wanted it to go to Canada, from there word could be sent to his government that he was in prison. I reported to Mr. Kelso in charge of the Detective Office, what he had told me; went back to the prisoner and told him that there were several detectives in the office. He said to me, "Hays, I tell you what you can do for me, you can let me go." I said I could not; he said, "If you do I will give you $1000 in gold;" said he had not that amount of money with him but his word was good for the money when he would get to Canada; that a man there had that amount of money and more belonging to him. I asked him if he had any hand in the fires here in New York; he said no, that he knew parties and they were then in Canada. Told him I could not let him go for the money, that it would be too much risk for me to run. He said he thought he would be found guilty and that I should run a little risk to save him. He was arrested before and got a letter through, and the Confederate government, hearing of his imprisonment put in prison a son of one of General Meade's head officers with eleven more officers, and kept them there until he was released. I said, "I suppose if your government found out that you were in prison here now that they would try to get you out in some way." He said he did not think they would because he was arrested under a different charge; he did not think his government was as strong now as it was then. I then told him I would see if I could let him go. Said he, "You know you can." Told him I would see what I could do and reported to Mr. Kelso and Inspector Carpenter what he had told me. Went back and asked him what time in the night he would like to get away; he said in the fore part, that he had two friends in Thirtieth street, that if he could get to their house he could get arms there and then it would take somebody to arrest him, "For, I know what would happen to me if I was to be caught and brought back again." Asked him if those friends could not furnish him the money before he would leave

New York. He said, yes, probably half of it, in greenbacks if not in gold; if not that he would leave me an order that would positively get it in Canada. Asked him if he had any friends he thought would get him clear on the way going. He said he would go to Thirtieth street and then to a friend about five miles from Jersey City who did business in New York, there he knew he would be safe. He would not tell me their names; said he did not know exactly the street or the number. Asked him if he gave the right name in the detective's office; he said he did not, that they did not know his name and could not find it out. I said "You must have done a good deal of harm to our government." He said, "Yes, I have taken hundreds and hundreds of prisoners. I have done Lincoln's government a good deal of harm and they know it." He said he knew something that would be worth $30,000 to anyone in the detective's office, if he would tell, and things that would be worth millions of dollars to the government if he would only come out and discover; said he knew he could not live long as he had got a ball through his side. Told him I would see what I could do. I then left him and when I came back he was gone; he was taken to Fort Lafayette the next day.

Cross-examined. Mr. Kelso said to me when I would get time to go into the cell to him, to see if I could draw on with him to get him to tell me what his name was, and if so to see if I could not get from him to tell me what charges he was arrested on. Kelso was then acting as sergeant. I did not go immediately to the cell where the accused was; I waited some time until I had leisure; I had a good deal of work to do. When I asked him what he was charged with he said that was his secret. I pretended to him that if he wrote a letter I would have it sent for him to Canada. I first intended to give it to Kelso who was in charge to let him act on it as he saw fit.

George S. Anderson. Am 18; have been in the Confederate military service. First saw Captain Beall, the accused, on the railroad out from Buffalo, several miles west towards Dunkirk, six days before my arrest at Suspension Bridge. I got to Buffalo on the Sunday preceding my arrest, an hour or two before daylight; went into a hotel and went to bed; was in citizen's dress and, had no arms. In the morning met Lieutenant Headley; he belonged to Morgan's command when I knew him; saw him but I did not speak to him and he did not speak to me. He got up and went out on the street and I went out after him. He signified to me to follow him out; went out after him and he told me to follow him upstairs in the same hotel, which I did; also saw Colonel Martin there who had been an officer in the rebel service. They said they were glad to see me, they had a plan in view then and they wanted more men and they would like to have me with them. They said they intended to capture a train; they told me to remain there that day, that they were going to Dunkirk the next day

to capture the train from Dunkirk the next night after that. They said they were from Canada. On Tuesday evening I went to Dunkirk; at Dunkirk they told me that they were not going to try to take the train that night; told me to be at the depot in Buffalo the next day at 2 o'clock; was there at the depot the next day at 2 o'clock and I saw those two officers there and they told me to follow them out along the railroad towards Dunkirk, which I did; followed them out I suppose three or four miles from the town when we overtook Captain Beall on the railroad. We went on the railroad five or six miles from the city—we four; we tried to get a rail off the track with a large sledge-hammer and a cold chisel; did not succeed in the attempt and went back to town. We then went to Canada that night, to Port Colburn; we remained there two nights and one day. We then came back to Buffalo; there was five in the party then, one additional man, I don't know who he was; he told me he was an escaped prisoner from Rock Island. The Colonel told me to go with Captain Beall and stay with him and he would meet us at a bridge with a sleigh—which I did. Col. Martin met us there and Lt. Headley was with him. The fifth man went with Captain Beall and me and we parted. We missed the bridge; went the other side of the bridge and we took one end of the road and came back to the bridge and he took the other end of the road; and the sleigh had got by when we arrived there. But the sleigh found us at last. We went to a point on the railroad I suppose five miles from the city. We did not do anything; the train passed about the time that we got there. We went back to Buffalo and I and Capt. Beall and this fifth man stayed together at the hotel until the next day at 2 o'clock. Then we met the Colonel and Lt. Headley in a sleigh at the same bridge the next day at two o'clock; the same party of five and the same sleigh. Then we went back to the same point on the railroad that we went to on the day before. Three of the party went up the track to get the sledge-hammer I think, and I and the Colonel were in the sleigh. We hitched the horses and got out and went up the railroad a piece and we saw the train coming, and the Colonel had taken up an iron rail and taken one end and laid it across the track. He got the rail by the side of the track. It was then just about dark. I saw the train strike the rail and the whistle blew just then, and it stopped, I suppose, some two or three hundred yards from there. I don't know what damage was done. Somebody came back with a lantern—two or three came back. We went back to the sleigh and went to Buffalo. The sledge-hammer was t h r o w n away, so was the cold chisel; it had been carried in the carpet-bag that was taken when we were arrested. They determined to leave and go to Canada; we took the cars for Suspension Bridge. On getting to Suspension Bridge on the train from Buffalo I and Captain Beall were arrested. I don't know

what became of the other three, I never saw them after I left Buffalo. Captain Beall told the officer that we were from Point Lookout; he said that we had escaped from Point Lookout and were making our way to Canada. I have most forgotten what was said there at the time. Colonel Martin or Lt. Headley or the accused did not state whether they were under orders or were acting by anybody's directions. The Colonel told me that he expected to capture the express and the money that was on it.

Cross-examined. Was born in Pittsylvania County, Va. Was in Morgan's corps, a private in the cavalry, with Col. Martin. He was a colonel in Morgan's corps. Was attached to my company about three weeks. Heard nothing said about there being three or some other number of Confederate generals on the express train of the Lake Shore Road and who were being removed from Johnson's Island to Fort Warren, Mass. Colonel Martin had command of this expedition and Headley and Capt. Beall acted under his orders. Had never seen Capt. Beall before the time I overtook him on the railroad. Capt. Beall gave no orders in regard to the attempt to get the train off the track. Col. Martin was the principal, I think he gave the orders; it all went by his directions. When the train struck the rail which Col. Martin had laid across the track, I and the Colonel were in the woods; the others I think were up the road a piece; I don't know whether they were concealed or not.

The *Judge Advocate* read the following three letters which the prisoner admitted; also a pocket diary which he said was kept by him and was in his handwriting.

Fort Lafayette, N. Y., *Jan. 22d*, 1865.

Mr. D. B. LUCAS,

173 Main St., Richmond, Va.

DEAR DAN:—I have taken up board and lodging at this famous establishment. I was captured in Decr. last, and spent Xmas in the Metropolitan Hd. Qrs. Police Station. I am now being tried for irregular warfare, by a Military Commission, a species of court.

The acts are said to have been committed on Lake Erie and the Canada frontier. You know that I am not a "guerrillero" or "spy." I desire you to get the necessary evidence that I am in the Confederate service, regularly, and forward it to me at once. I shall write to Cols. Boteler and Holliday in regard to this matter. I must have this evidence. As the Commission so far have acted fairly, I am confident of an acquittal. Has Will been exchanged? I saw that Steadman had been killed in Kentucky. Alas! how they fall! Please let my family know if possible of my whereabouts. Where is my Georgia friend? Have you heard any thing from her since I left? May God bless her. I should like so much to hear from her, from home, Will, and yourself. Be so kind, therefore, as to attend

at once to this business for me. Remember me to any and all of my friends that you may see.

Send me some postage stamps for my correspondence.

Hoping soon to hear from you,

I remain your friend,

J. Y. Beall, *C. S. N.*

If Mr. Lucas is not in Richmond, will Mr. Hunter attend to this at once.

Fort Lafayette, N. Y., *Jan. 22d*, 1865.

Col. A. R. Boteler,

Richmond, Va.

Dear Sir:—I am on trial before a Military Commission for irregular warfare, as a "guerrillero" and "spy." The acts are said to have been committed on Lake Erie and at Suspension Bridge, in Sept. and Dec. last.

As I cannot in person procure any papers from Richd., I have to rely on my friends, and therefore I request you to procure evidence of my being regularly in service, and forward such evidence at once to me. I have also written to Messrs. Hunter and Lucas. Please call on them in regard to this, and also Mr. Henderson if necessary.

Very truly, your friend,

J. Y. Beall, *C. S. N.*

Fort Lafayette, N. Y., *Jan. 22d*, 1865.

Col. Jacob Thompson,

Toronto, C. W.

Sir:—I was captured in Decr., and am on trial before a Military Commission for irregular warfare, as a "guerrillero" and "spy." The acts are said to have been committed on Lake Erie and at Suspension Bridge, N. Y., in September and December last.

I desire to procure from my Government and its authorities evidence of my being regularly in service, and of having been acting under and by authority. Please procure and forward me, as soon as possible, certificates or other evidence confirming this fact.

The Commission so far have evidenced a disposition to treat me fairly and equitably. With the evidence you can send, together with that I have a right to expect from Richd. and elsewhere, I am confident of an acquittal.

Please attend at once to this, acknowledging at any rate the receipt of this letter.

Very respectfully,

J. Y. Beall.

Thursday, Dec. 29, 1864.. I purpose to keep in this little book a daily account of my imprisonment as far as I can.

First. As to my incarceration:

I was arrested Friday, December 16th, in the N. Y. Central R. R. station house, at the Suspension Bridge (junction with the Gr.

Western R. R. of Canada). I was brought to this city Sunday evening (18th), and lodged here. I have been taken out some half dozen times to be shown men, whose houses have been attempted by fire, or property otherwise attempted. The *modus operandi* is this: The prisoner, unkept, roughly clad, dirty, and bearing marks of confinement, is placed among well-dressed detectives, and the recognizer is shown in. As a matter of course he can tell who is the stranger. My *home* is a cell about 8 feet by 5, on the ground floor. The floor is stone; the walls brick; the door iron, the upper half grated, and opens into a passage running in front of three other cells; this passage is lighted by two large windows doubly grated, and has an iron door; at night it is lighted with gas. The landscape view from my door, through the window, is that of an area of some 30 feet square. By special arrangement I have a mattress and blanket. There is a supply of water in my room, and a sink. My meals are brought three times a day, about 9, 3, and 7. My library consists of two New Testaments. I am trying to get a Book of Common Prayer. The first week there were brought to this place 10 persons, charged with criminal offenses: men, women and children. At first I took an interest in their cases, but now I do not; they all have been guilty, I believe, and they all wished me a speedy riddance. Nearly everyone I have met with seems to regard society as his enemy, and a just prey. They look on an offense simply a skirmish. Profane, lying, and thieving, what a people! Nearly all recommend me to take the oath of allegiance and enter the army and desert. But some are opposed to betraying comrades ("going back on 'em"), while others more liberal, advocate any means as legitimate to save oneself from severe punishment. The Christmas of '64 I spent in a New York prison. Had I, 4 years ago, stood in New York and proclaimed myself a citizen of Virginia, I would have been welcomed; now I am immured because I am a Virginian *tempora mutantur, et cum illis mutamus.* As long as I am a citizen of Virginia, I shall cling to her destiny and maintain her laws as expressed by a majority of her citizens speaking through their authorized channel, if her voice be for war or peace, I shall go as she says. But I would not go for a minority carrying on war in opposition to the majority, as the innocent will suffer and not the guilty; but I do not justify oppression in the majority. What misery have I seen during these four years, murder, lust, hate, rapine, devastation, war! What hardships suffered, what privations endured! May God grant that I may not see the like again! Nay, that my country may not! Oh, far rather would I welcome Death, *come as he might;* far rather would I meet him than go through four more such years. I can now understand why David would trust to his God, rather than to man.

Since I have been placed in this cell I have read the Scripture, and have found such relief in its blessed words, especially where it speaks of God's love for man; how He loved him, an enemy, a sinner, and sent His Son into the world to save His enemy; how He compels the wretched from the hedges and highways to come

into the feast; how any may come, and how He bids them, entreats them. Though it may seem unmanly to accept offers in our adversity which we neglected in prosperity, yet it is even so that with His assistance I will go up and beg forgiveness, and put my trust in the saving blood of Him who died for man. Aye, I pray Him to grant His grace to my mother and sisters and my loved one. If He is with them, who can be against?

What pleasure I take in the hymns I learned in boyhood! They come back to me now in my manhood and in my sorrow, and with God's blessing have wiled away and comforted many a weary and lagging hour.

Dec. 30th. Last evening the doorman bought me a "Book of Common Prayer" for $1.00, and it was and will be a source of great comfort to me. I read over the familiar services and oft-heard hymns and committed two—"Rock of Ages" and "Sinners Turn, Why Will Ye Die?"—to memory. There were four accused in the three cells last night. As yet I have heard but one give good advice to another. They all with one accord exhort one another to be good soldiers in warfare *vs.* society, not to give up stolen property; and, above all, not to trust to the detectives, who are their natural and mortal enemies. Such is life!!!

Dec. 31st. The year is gone; begun for me in ———; it sees me, as it dies, a prisoner in New York. Today I complete my twenty-ninth year. What have I done to make this world any wiser or better? May God bless me in the future; be it in time or eternity. May I be enabled to meet my trials with resignation, patience, and fortitude, as one who serves his country and home and people. The year went out in rain—drizzling rain. Will I see the year 1865 go out? or will I pass away from this world of sin, shame and suffering?

Jan. 1st, 1865. Sunday, first day of the week and first day of a new year. To-day I enter my thirtieth year of pilgrimage. According to the calculation of my father's family, I am more than half-way down life's stream, even if spared by war and sudden death. But in prying into the future, I can see nothing to induce me to think that my days will be lengthened to that age of fatality, fifty-six. Has my life been so crowded with pleasure or good deeds, that I need desire to prolong it? Alas! no. Though well reared, and surrounded with very many advantages, I have not done any thing to give me particular pleasure; nor, on the other hand, have I been remarkable for the opposite. I am truly thankful that I always stayed with mother and the girls and tried to do my duty by them; that is one consolation at least, and also that I never voluntarily left them. They know not where I am to-day; and every one of them is this day thinking of me. Little do they know where I am. Indeed, I doubt if they have heard any thing definite from me for many a weary month. Oh this war!

This far on life's way I have lived an honest life, defrauding no man. Those blows that I have struck have been against the society

of a hostile nation; not against the society of which I am a member by right, or *vs.* mankind generally. To-day the thought has obtruded itself again and again to become an "Ishmael." Your country is ruined, your hopes dashed—make the best bargain for yourself. "Remember the history of the civil wars of France, of England—the examples of Talleyrand, Josephine, &c.; of Shaftesbury, Caermarthen, Marlborough, &c." To-day my hands have no blood on them (unless of man in open battle); may I say so when I die. I saw grandfather and father die; they both took great comfort from the thought that no one could say that they had of malice aforethought injured them. Better the sudden death, or all the loathesome corruption of a lingering life, with honor and a pure conscience, than a long life with all material comforts and the canker-worm of infelt and constant dwelling dishonor; aye, a thousand times. O God, our Creator, Preserver, and Saviour! I pray give me strength to resist temptation, to drive back the thick-coming fancies brooded of sin and dishonor, and to cling to the faith of Jesus, who said, "Do unto others as you would that they should do unto you."

Jan. 2nd. Last night was called out, and a search made of my room and my person. The captures consisted of two knives. Poor Grimes! your gift and keepsake was duly declared contraband and confiscated. They gave me two newspapers, which do seem to bear out the statements of Southern loss, &c. Savannah, indeed, is fallen; but its garrison was saved, so that Hardee and Beauregard have an army. And Butler did not take Wilmington, though the fleet did storm long and heavy. Poor Bragg has some laurels at last. Oh that Gen. Lee had 50,000 good fresh veteran re-enforcements! But what are these things to me here! I do most earnestly wish that I was in Richmond. Oh for the wings to fly to the uttermost part of the earth!

What would I do without the Bible and Prayer-book, and the faith taught in them, best boon of God, the fount of every blessing? That faith nothing can take away save God.

February 7.

Mr. Brady read a certified copy of a warrant signed by S. P. Mallory, Secretary of the Navy of the Confederate States and dated March 5, 1863, appointing John Y. Beall of Virginia acting Master in the navy of the Confederate States; also a proclamation dated Dec. 24, 1864 signed by Jefferson Davis and J. P. Benjamin, Secretary of State, it declared:

Whereas the enterprise made or attempted in the month of September last (1864), for the capture of the steamer *Michigan*, an armed vessel of the United States, navigating the lakes on the boundary line between the United States and the said British North

American Provinces, and for the release of numerous citizens of the Confederate States, held as prisoners of war by the United States at a certain island called Johnson's Island; and whereas, the said enterprise or expedition for the capture of the said armed steamer *Michigan*, and for the release of said prisoners on Johnson's Island, was a proper and legitimate belligerent operation, undertaken during the pending public war between the two Confederacies, known respectively as the Confederate States of America and the United States of America, which operation was ordered, directed, and sustained by the authority of the Government of the Confederate States, and confided to its commissioned officers for execution, among which officers is BENNETT G. BURLEY;

Now, therefore, I, JEFFERSON DAVIS, President of the Confederate States of America, do hereby declare and make known to all whom it may concern, that the expedition aforesaid, undertaken in the month of September last, for the capture of the armed steamer *Michigan*, a vessel of war of the United States, and for the release of the prisoners of war, citizens of the Confederate States of America, held captive by the United States of America at Johnson's Island, was a belligerent expedition ordered and undertaken under the authority of the Confederate States of America, against the United States of America, and that the Government of the Confederate States of America assumes the responsibility of answering for the acts and conduct of any of its officers engaged in said expedition, and especially of the said BENNETT G. BURLEY, an Acting Master in the navy of the Confederate States.

And I do further make known to all whom it may concern, that in the orders and instructions given to the officers engaged in said expedition, they were specially directed and enjoined to "abstain from violating any of the laws and regulations of the Canadian or British authorities in relation to neutrality," and that the combination necessary to effect the purpose of said expedition "must be made by Confederate soldiers and such assistance as they might (you may) draw from the enemy's country."

THE ARGUMENTS TO THE COURT.

MR. BRADY FOR THE PRISONER.

Mr. Brady. My client spurns any suggestion that has been made here that he had any part or knowledge of the fires which have lately broken out in this City. He has the most unlimited confidence in his judges and knows that such matters will not affect their minds. Mr. Beall is a gentleman of highly respectable origin, his ancestors emigrating many years ago from the north of Ireland.

He was a man of considerable property in the South, and

he entered into the fight which is now going on from such motives as had impelled men of high intelligence, and men who, however delusively influenced to such an opinon, really think as sincerely as we believe in the sacred cause that we sustain, that they were acting from the most laudable motives. And while I presume that all the gentlemen in this room, like myself, feel that this battle should never cease on our side until we have imposed again the authority and power of our Government over all the territory we ever possessed, and even feel, as I certainly do for one, that when that shall have been accomplished, the power of the Government should be felt in other directions, whenever the justification arises; yet we would be false to our Maker if we supposed that all the men who fought on the other side were hypocrites and fanatics, or were impelled by such bad motives as impelled men to perpetrate crime. It would be inconsistent with my views of the majesty and justice of the Almighty that he should permit such men, led by such intellects, to act entirely from unreasonable and blind and wicked impulses. That we have justice on our side is undoubtedly in our belief certain. But soldiers, whatever civilians may do, will never look at an enemy like the one we are contending against, as utterly bereft of reason, as utterly inferior to us, and not exactly level with the brutes. The accused has been, as the gentlemen of this Court have learned from his diary, I think, intelligently educated; and whether it makes for him or against him, he has received sound moral culture. The mother and the sister to whom he so affectionately refers in that diary, have exercised over him—the mother first, and the sister afterwards—those ennobling influences which in the homestead exercise their great power over all of us in childhood and after life. And being a gentlemon of education, a graduate of the University of Virginia, he has his own views about this case, and has communicated them to me, and I will present them to you. I have never had the pleasure of addressing, except as a private citizen, any of the honorable members of this Court; and my friend Major Bolles—I am sure he will permit me to call him so, as he

has acted such toward me—and myself have never been associated or opposed in any matter. And for that reason, at the risk of being considered, for the moment, egotistical, I wish to say to this Court, on the honor of a gentleman, that I never have supposed that Lord Brougham's definition of the duties or right of an advocate was correct. I have never entertained the idea that it proceeds, in the view of refined society, or in the view of any instructed conscience, further than this, that an advocate may fairly present honorably whatever any man who is accused would have a right in truth to say for himself, and no more. With that view of the duty which I am attempting to discharge on this occasion, I present in the first place the prisoner's proposition that this Court has no jurisdiction of the matters which are here being investigated; that the trial of these offenses should take place in a general court-martial, organized according to the well-established principles of the laws of war; and that a Military Commission, though it may exercise power over the citizens of the Government which establishes it, cannot, according to the law of war and of nations, take cognizance of the specific accusations presented here. I have never examined this question at all until this trial arose; and I say to you, that the questions involved in this case, except so far as I have derived any knowledge from my general reading as a lawyer, are new to me. Some of them seem to be novel even in reference to the large experience of the Judge Advocate General, whose opinions are contained in the Digest of his decisions recently published.

I find by looking through the history of jurisdiction, especially as to spies, that by an Act of Congress of 1808, it is in terms declared that a person charged as a spy shall be tried by a general court-martial. The Act of the 13th of February, 1862, contains the same provision; but the Act of 1863 provides that persons embraced in the description of spies as there given, may be tried by a court-martial or military commission; and of course it would seem that if it were within the power of Congress to make such a law, there is a specific warrant for trying this party before a military com-

mission on the charge of being a spy. How much further it extends is a little questionable. But there is this peculiarity, to which I must call the attention of the Court. I refer to the Revised United States Army Regulations of 1863, page 541. In the Act of 1863 it is provided in the first Section, that so much of the law of July 17th, 1862, as requires the approval of the President "to carry into execution the sentence of a court-martial, be, and the same is hereby repealed, as far as relates to carrying into execution the sentence of any court-martial against any person convicted as a spy or deserter."

You see, therefore, that unless there is something to modify this, a peculiarity arises from this legislation if a man be tried before a court-martial.

The Judge Advocate called the attention of the counsel for the accused to the Act of July 2d, 1864, chapter 215, passed at the last session of Congress, which extends the provision to sentences of military commissions as well as court-martials on the trial of spies, guerillas, etc.

Mr. Brady. I am very much obliged to you, and I am confident that something has occurred in legislation on that subject, or in the decisions. I believe one of the decisions of the Judge Advocate General was to the effect that in equity, that provision would be extended to the cases of conviction before a military commission. But I had not in my library the Act of the last session; and that being explained to me, I have said all that I wish to present on the subject of jurisdiction, and pass from that to another proposition, and that is, that Capt. Beall in these charges and specifications seems to be treated in two aspects: one as a mere individual, engaged in the perpetration of an offense against society at large; and the other in the character of a military man, offending against the laws of war. If what is here presented against him in the proof shows that he has only committed some offense against general society cognizable in the ordinary courts of judicature, then he would be entitled under the Constitution of the United States to a trial by jury. That right accompanies him as a citizen of the United States, with-

out any reference to what any revolting State may declare; and whatever the South may say or think, we have not given up a single provision of our Constitution in regard to those matters, although we have heard of, and the Government has acted on the idea of the suspension of the habeas corpus, and done other acts incident and proper to a state of war, so that some of the provisions of the Constitution have been to a certain degree interfered with. The Court of course perceives at once that I am correct in saying he is so treated. I will refer to this Digest of the opinions of the Judge Advocate General at p. 79-81, 11th par.

"Where a military commission was invested by the original order of the general convening it, 'with jurisdiction in all cases civil, criminal, and in equity, usually triable in courts established by law'—held that such a tribunal was not authorized to be created, either by law or usage, and *recommended* that it be ordered by the Secretary of War to be dissolved." Very properly, because in that case it would seem, that in organizing the court the orders grasps all kinds of jurisdiction incident to the ordinary tribunals, and that was an assumption of power which the Government through its proper officers, very properly reprehended. I then read paragraph 16, which is as follows:

"The murder of Union soldiers, for the disloyal and treasonable purpose of resisting the Government in its efforts to suppress the rebellion, is a military offense, quite other than the ordinary offense of murder, cognizable by the criminal courts; and citizens who have been guilty thereof, though in a State where the courts are open, may be brought to trial before a military commission. In such case, the circumstances conferring jurisdiction should be indicated in the charge and distinctly set forth in the specification."

That will commend itself to every member of this Court. It is quite possible that a man in the Confederate service, ordinarily engaged as a soldier by his Government—I shall use their phrase of course—might come within our lines and perpetrate a murder as an individual, in a way and under circumstances wholly divested of any relation with his military character, for private gain or personal revenge. The mere fact that he was a Confederate soldier, that he was within our lines, and that he murdered one of our citizens, would not render him amenable either to a court-martial or a military commission, if the circumstances indicated nothing

giving it the quality of a military offense. That you very well understand. That is illustrated in this case of murder, where the Court and Judge Advocate must state the special circumstances which give to that murder of Union soldiers the quality and character bringing it within the jurisdiction of a military tribunal.

Now, in the expedition of Lake Erie, with which the accused is connected, and the other attempt on the railroad, offenses were committed cognizable by the laws, in one case of Ohio and in the other of New York; punishable by those laws. And if the evidence should establish that the persons engaged in either of those acts were acting irrespective of character as soldiers of the Confederate Government, then we respectfully submit that neither this Court nor a Court-martial would have authority to try the accused. If one of our soldiers should straggle and go into Richmond, or into any of the towns along the path of Sherman's army, and remain there and secrete himself and commit larceny or burglary, he would not be amenable to any court-martial in the South for any such act, as we understand it. And we apply the same principle to the same act perpetrated in our lines by a Confederate soldier.

In regard to the offense of the attempt to throw this railroad train off the track, wholly irrespective of the design avowed, according to the testimony of the witness Anderson, to take possession of the safe and money, we have a statute in New York, passed in 1838, which distinctly makes it an offense to do any such thing in regard to railroad trains, and subjects the offender to five years' imprisonment in the State's Prison, or one year in the penitentiary, according to the judgment and discretion of the court. The Act of March, 1863, section 30, provides this:

"That in times of war, insurrection, or rebellion, murder, assault and battery with an intent to kill, manslaughter, mayhem, wounding by shooting or stabbing, with an intent to commit murder, robbery, arson, burglary, rape, assault and battery with an intent to commit rape and larceny, shall be punishable by the sentence of a general court-martial or military commission, when committed by

persons who are in the military service of the United States, and subject to the articles of war."

Congress deemed it necessary thus to provide for the authority of a court-martial to punish our own citizens when in the military service, for the crimes of murder, robbery, &c.

But the accused and myself respectfully submit that the perpetration by a man who happens to be a Confederate soldier, within our territory, of an offense, in the consummation of which he acts not in any military capacity or quality, is not an offense which a court-martial or military commission can take cognizance of. And if you look at this man who is here now, as here amongst us without a uniform, acting as a mere aggressor against general society, the punishment of his offense belongs to the ordinary tribunals and not to this. I will consider that again in connection with the specific charge of his being a guerrilla, where it is supposed that the due authority for taking cognizance of this case will be found. I pass it for the present, having closed what I intended to say on the subject of the tribunal which should investigate this case, and the principles by which they should be governed.

The accused also insists through the medium of his own reason and his reading and reflection, that the charge—particularly the first charge—"violating the laws of war," is too general and vague, and does not conform to the requirements of the law applicable to cases of this character.

When I was first consulted in this case, it was suggested that the objection to the generality of this charge should be made at the outset, and that is the usual course. But I said that so far as that objection was worthy of any consideration, the honorable members of this Court would consider it quite as much in their ultimate action as if the objection was specifically made. And I must say to my client, with your permission, that usually the objection to any thing on account of its generality is not of practical value, because if it be erroneous, it is only informing your adversary to make it more specific. It is of no advantage to the accused; and I

hope the accused, in this instance, will feel, as I do, that this Court has acted with the greatest possible courtesy—certainly to me and I think to the accused; and the Judge Advocate has not done any thing in this case not eminently professional and honorable, and I am certain he will do nothing prejudicial to the accused except in such manner as becomes an officer and a gentleman. I lay no stress, therefore, upon this objection as to the generality of the charge, because I don't see that there is any substance in it, except the one that naturally suggests itself to the accused that he might be tried again, and the charge, "Violation of the laws of war," would not show what specific offenses were presented against him. I leave this part of the case with just that remark, and come directly to what I understand to be the substance of the two accusations, without reference to the language of the specifications. And we have ourselves met with the charge, in the first place, that he was a spy; and, in the second place, a guerrilla.

This charge of being a spy seems, from the language of these specifications and the tenor of the proof, intended to apply to him during all the time that he was in the condition which, for the present, I shall call *within our lines,* though I presently may have to ask this Honorable Court to inform themselves what that phrase means, as applied to the particular war now being waged between the two sections of our country. What are lines? Now, as to his being a spy, I may deceive myself, but I see no proof whatever to justify that accusation. And if, in what I am now about to say, I shall accidentally bring my mind in conflict with any settled opinions which you gentlemen of the profession of war may have in your own minds, you will be good enough mentally to pardon me and wait until I get through with the demonstration I attempt to offer. And not to appear pedantic, as any man may become, who looks through encyclopædias and dictionaries, and gets the reputation of being learned without the merit; for as the poet has said:

> "Digested learning makes no student pale;
> It takes the eel of science by the tail;"

let me come to the definition of the word *spy*. We know it comes from the French word *espionner*—to observe with the eye.

That definition is certainly not broad enough, because a blind man might be a spy and a very good one. He may roam through the country as a blind beggar, and through his ear receive intelligence to his side of the greatest service.

And, if actual observation with the eye were necessary, Major André was not a spy, for he made no observation within our lines that could be of any possible service. He was not there for that object. He came there to meet Arnold, to get despatches with a view to deliver them to Sir Henry Clinton. He was convicted of being a spy because he was within the enemy's line to receive intelligence, and deliver it to the Commander-in-chief of his own army, that it might be used against the Colonies.

That is a very clear case of being a spy; just as clear as the case of Davis who was convicted the other day, a man who was carrying despatches from Canada to the South, and passing through our lines for the purpose of communicating that intelligence. And I cannot imagine how all this sympathy is wasted upon André, which I am so sorry to say has found its way into the excellent work of Phillimore on International Law. It is true that André had on a uniform, but it was covered over with an outer coat. There was an actual concealment of the true character of the man, and he was travelling with a false pass, I may say, from Arnold; and Arnold had the impudence to insist that André should be surrendered to Sir Henry Clinton, because he was travelling under this traitorous pass given by him.

And André the less deserves our sympathy, because one letter of his addressed to Col. Sheldon is in existence, mentioned Irving's Life of Washington, showing that he intended to take advantage of a flag of truce for the purpose of holding his communications with Arnold. And if any thing on earth known among men, recognized by society, and sustained by humanity, is deserving of veneration, it is a flag of truce—

that Divine aspect of Heaven amidst the grim and bloody horrors of war.

Now the definitions of the term *spy*, which I will take the liberty to mention so as to recall your memories to the nature of the word, are, first, from Webster. He gives three: 1st. "A person sent into an enemy's camp to inspect their works, ascertain their strength and their intentions, to watch their movements, and secretly communicate intelligence to the proper officer. By the laws of war among all civilized nations, a spy is subjected to capital punishment. 2d. A person deputed to watch the conduct of others. 3d. One who watches the conduct of others."

Of course, the first is the only one important in reference to the word *spy* as used in these charges and specifications. Bouvier, in his Law Dictionary, says a spy is "one who goes into a place for the purpose of ascertaining the best way of doing an injury there. The term is mostly applied to an enemy who comes into the camp for the purpose of ascertaining its situation in order to make an attack upon it."

Bailey gives, I think, the best definition of *spy* that I have found anywhere; but of its excellence, of course, you will be the judge. He says a spy is "one who clandestinely searches into the state of places and affairs."

Major General Halleck, in his International Law and Laws of war, p. 406, says:

"Spies are persons who, *in disguise, or under false pretenses*, insinuate themselves among the enemy, in order to discover the state of his affairs, to pry into his designs, and then communicate to their employer the information thus obtained. * * * * The term *spy* is frequently applied to persons sent to reconnoitre an enemy's position, his forces, defenses, &c., but not in disguise, or under false pretenses. Such, however, are not *spies* in the sense in which that term is used in military and international law, nor are persons so employed liable to any more rigorous treatment than ordinary prisoners of war. It is the *disguise*, or *false pretense*, which constitutes the perfidy, and forms the essential element of the crime, which, by the laws of war, is punishable with an ignominious death."

We see, therefore, that irrespective of the Acts of Congress, from the nature and signification of the word *spy;* from the

definitions which have been given to it by intelligent writers; from what is said here by the General, who is certainly an excellent authority, there must, to constitute the crime of a spy, be something in the nature of a disguise, and the purpose of it to clandestinely obtain information to communicate it to the enemy. Now, let us see what Congress has said on the subject. I refer to page 502 of the Army Regulations, and this is somewhat interesting to me, whatever it may be to the Court—I mean the character of the legislation on this subject. In 1806, Congress provided: "That in time of war all persons not citizens of, or owing allegiance to, the United States of America, who shall be found lurking as spies in or about the fortifications or encampments of the armies of the United States, or any of them, shall suffer death, according to the law and usage of nations, by sentence of a General Court-Marshal."

It related, you see, exclusively to persons not citizens of the United States, and did not owe it allegiance; and no other persons, by the definition of Congress, could be regarded as spies. So matters remained, for we had no occasion to legislate on the subject at all, until the act of 1862 was passed, which provides "that, in time of war or rebellion against the supreme authority of the United States, all persons who shall be found lurking as spies or acting as such, in or about the fortifications, encampments, posts, quarters, or headquarters of the armies of the United States, or any of them, within any part of the United States which has been or may be declared to be in a state of insurrection by proclamation of the President of the United States, shall suffer death by a general court-martial."

That you will perceive is a provision made to reach the case of persons acting as spies in the South, or in such portions of the States, or in such States as were in rebellion; and Congress seems to have considered that special legislation was necessary for that object; and that won't apply to the accused; but, in 1863, the last legislation that I know of on this subject contains the provision: "*And be it further enacted,* That all persons who, in time of war or of rebellion against

the supreme authority of the United States, shall be found lurking, or *acting* as *spies* in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or *elsewhere*, shall be triable by a general court-martial or military commission, and shall, upon conviction, suffer death."

All persons—there is no longer the distinction that they shall not be citizens or owe allegiance to the United States. The term is now large and comprehensive; but they must be lurking or acting as spies in or about the fortifications, camps, &c.; and I would respectfully submit to the Court that the words "or *elsewhere,*" only mean elsewhere in reference to something of the same character. They cannot mean any place in the wide world, because, according to that definition, if a man were out in the middle of the prairies on his way, or if he were in any State in the South, if he were near any fortification that we had there, or was away from any fortification, if he were lurking, it would reach him. Therefore it seems that so far as Congress has legislated upon this subject, they only treat as a spy a person who is lurking, acting specifically as a spy, in or near some place where the army is, with a view to detect its movements and inform the enemy; and the question will be whether the prisoner stands in that category. Now, of course I heard when I was a boy, before I had ever looked at a law book, that there was a traditional idea, and it seems to have prevailed to this moment, that the mere fact of an enemy's being found within the lines of an adversary, without a uniform, constitutes the offense of being a *spy*. We find that that is not strictly correct, or else it becomes correct by reason of his appearing without a uniform being equivalent to assuming a disguise.

Well, of course, it is just as much a disguise to take off a dress by which you are ordinarily characterized, as to put on one different from your ordinary garb. That I concede, and it is very plain; but in the case of the accused, there is no proof that he ever had a uniform, that he ever owned one or wore one; and I suppose you, gentlemen, know that, as a general thing, if not almost invariably, there is no such thing

as a uniform in the South, and has not been for two or three years, except in the general resemblance that their clothes have; and I believe you know that, in almost every case, if I am correctly informed, where an officer of the Confederate Government has been captured by our side, he has not had on any buttons or other insignia to denote his rank or condition. There may have been many cases to the contrary; but if I am correctly informed, General Johnson, when captured by Hancock, had no uniform on. He had a round hat, and was very ordinarily attired. He was found in our lines, and in citizen's dress. Where he got that dress; how long he had worn it; whether he had had any other for the last five years, we know nothing about. But whatever may have been his dress at any time while within our territory, when will this Honorable Court say that the accused was within our lines, which is essential to constitute his being a spy? What are, in a military sense, the lines of the United States Army for the purpose of determining the question of one's being a spy, or any other question? Now, even if I felt so disposed, I have not the capacity to give this Honorable Court any information. That is a matter which military gentlemen understand perfectly, and they must determine for themselves. All of us who have been educated at all have some general idea of it; but when we seek for definitions from the lexicographers, we derive very little assistance. I find Mr. Webster, in his dictionary, only gives one: "A trench or rampart; an extended work in fortification," for which definition he cites Dryden. Now, I respectfully ask you, what are the lines of the United States Army, the being within which, in disguise, would constitute being a spy, if there were nothing to take that character away from the accused party? Do you mean all of the United States not in rebellion? Why any more or less than all the territory that the United States ever occupied or governed? We have never consented to the idea that we have parted with one inch of that territory for any purpose. We claim that the United States exist now as they always did, and exist under the same Constitution as ever, for there is no other Constitution; and what-

ever moral progress, whatever intellectual progress, we may have made, however far we may have advanced toward any philanthropic or other result, we have had no other Constitution, and we never can have, until we change it in the mode prescribed in the Constitution itself, and by which we have just taken a step toward the abolition of slavery. So that, in a general sense, if the United States now should get into a war with France or England, according to what seems to be claimed here in the case of Capt. Beall, the whole of our territory would be the lines of the United States Army. Is that so? Or has this word *lines* a particular signification in military law and practice more restricted than that? If it have, you can say to one another what it is; and when this Court shall have disposed of its duties in this case, if I have the pleasure of meeting one of you gentlemen, and there is nothing improper in it, I shall ask you to construct a definition which may be of service to me in the future. But I had supposed the word lines had some reference in general parlance to a camp. You may make a city a camp or an entire district, but I don't know that you can make a whole country a camp. I don't know whether Cæsar, Hannibal, or Alexander, in any of their extensive marches, could have established as their camps the whole country through which they went. I don't suppose that General Sherman could claim the whole State of Georgia as his camp. All this may be of very little consideration to you, because you know so much more about it than I; but I respectfully submit that the word lines must mean some imaginary or prescribed territory relating to, and directly affected by the government of the army as such; and in that sense I don't see how Beall was within our lines in a military sense, because he happened to be in the State of Ohio taking passage in a steamboat, or up at Niagara in the State of New York; the State of New York never for one moment being subject to any kind of military occupation. I don't see how the State of Ohio or the State of New York could be within our lines. But that proposition I submit to your intelligence and judgment.

But suppose it should appear that the accused was in dis-

guise, or without uniform, and within our lines; what was he here for? Was he here to lurk as a spy? Why, not at all. The evidence not only fails to show that, but it directly establishes that he was not. A man belonging to the Confederate service might come within our lines without his uniform, for a very lawful purpose. He might come to perform an act of humanity; he might come to see a friend or relation, not to speak one word on the subject of war. I think I may say I know the fact that officers of the armies on both sides who have had the acquaintance of ladies before this war have crossed the lines to visit them. And if you could to a certainty prove that a Confederate officer came within our lines, or they could prove that one of our officers went within their lines for a mere social purpose, it instantly divests him of the character of a spy. I will now refer you to the Digest of the opinions of the Judge Advocate General, p. 127:

"That an officer or soldier of the rebel army coming within our lines disguised in the dress of a citizen, is *prima facie* evidence of his being a spy. The disguise so assumed strips him of all claim to be treated as a prisoner of war. But such evidence may be rebutted by proof that he had come within our lines to visit his family, and not for the purpose of obtaining information as a spy. The spy must be taken in *flagrante delicto*. If he is successful in making his escape, the crime, according to a well-settled principle of law, does not fathom him, and, of course, if subsequently captured in battle, he cannot be tried for it. Merely for a citizen to come secretly within our lines from the South, in violation of paragraph 86, of General Order 100, of 1863, does not constitute him a spy. A rebel soldier, cut off in Early's retreat from Maryland, and wandering about in disguise within our lines for more than a month, and seeking for an opportunity to join the rebel army, but not going outside our lines since first entering them; *held* not strictly chargeable as a spy."

Now, on this subject we find that the accused did not come here as a spy, nor for any such purpose. He came on one occasion, if you believe the testimony in this case, to assist in a demonstration for the relief of the prisoners on Johnson's Island; a specific purpose of war if he acted in a military capacity. And in the other case, he was in the State of

New York engaged in the capture of a railroad train, so as to get possession of the mails and money in the express safe; and coming for either of those purposes, he did not come to lurk or make himself a spy in any way. And on that subject the Judge Advocate has been good enough to present the letters and diary of this young man to prove his declarations. Now, on the subject of declarations, the law is this, and it has always been the law: If I prove in reference to a man, in any proceeding, civil or criminal, his statements, they must always be taken together; what exculpates you as well as that which proves you guilty. That is a rule of the soundest reason. If you should happen to shoot a man, and another person should arrest you, and should ask, "Who perpetrated this?" and you should say, "I killed that man, but I did it in self-defense," by no law of reason or justice could the first part of that statement be proved against you and the rest reserved. And more than that; when you prove a man's statements or declarations, as they are called technically, they must be taken as true, unless they are in their nature incredible, or unless they are disproved by some other testimony. Now, we have here the letters written by this man, to which I shall refer—written while he has been in custody; and for what he writes, and states, and does, the accused holds himself responsible.

Mr. Brady read extracts from the three letters, and from the diary of the accused.

Now, bearing upon this question of whether he was one who intended to engage in the business of being a spy, I invite your attention to this diary, so impressively read by my friend the Judge Advocate, the other day, where the accused declares in regard to himself, that, although he has been imperfect—and which of us has not—that although his life has not been one unvarying progress of what is pure and good, he only reproaches himself as a Christian reproaches himself; as any one of us reproaches himself in the silent watches of the night, when we are apt to suppose ourselves more completely in the presence of our Maker, and we are compelled to acknowledge the weakness, and imperfections,

and folly which have disfigured our lives. It is only in this sense he has reproached himself. But he takes credit to himself, and thanks the Lord that he can say: "I never stained my hand with the blood of my fellow man, except in lawful battle; and I cling to my mother and sister, and never left them voluntarily." I cite these things—fortunately in this case—as showing who it is you are trying, and as bearing upon the general probability of this young man, just thirty years of age, having forgotten the principles that he learned at the fireside, and by hereditary transmission from honored and honorable parents—the probability of his doing any thing except what he intended to be, and regarded as honorable warfare, according to the civilized customs of mankind. And I can assure you that there is nothing in that man's nature which does not make it abhorrent to him, if I am a judge of human nature at all, to do any thing than what a misled Virginian would think was just and manly, on the side to which his conscience, conviction, education, and military attainments, led him. I think, therefore, that I am warranted in saying, that the charge of being a spy is not only not sustained, but entirely disproved. He did not come as a spy; he did not lurk as a spy; he sought no information; he obtained none; he communicated none. He was arrested at Niagara on his way to Canada, having, according to his declaration to Mr. Thomas, a witness of the Government, and whose statement the Government must act upon, reached Baltimore after the failure of the expedition on Lake Erie, been provided there with funds, and was making his way to Canada. He was just exactly in the condition of that soldier in Early's army who had been wandering about in our lines in disguise, waiting for an opportunity to return to the rebel force. And that is precisely what this man was engaged in doing, irrespective of the assault upon the railroad train to which I am about to refer. Under those circumstances he was not a spy—he was any thing and every thing but a spy. He was acting under a commission; he was in the service of the rebel Government; he was engaged in carrying on warfare; he was not endeavoring to perpetrate any offense

against society. And if he were not acting under a commission or with authority, but was acting upon his own responsibility and from the wicked intent of his own heart for motives of personal malice or gain, he is not amenable to this tribunal, but must answer to the ordinary courts of the State within which the crime was committed.

I now proceed to the second subject—the accusation that he was acting in violation of the law of war as a guerrilla. On that subject the Judge Advocate General says, p. 66:

"The charge of being a guerrilla may be deemed a military offense *per se* like that of 'being a spy,' the character of the guerrilla having become, during the present rebellion, as well understood as that of a spy, and the charge being therefore such an one as could not possibly mislead the accused as to its nature or criminality if proved, or embarrass him in making his plea or defense. The epithet 'guerrilla' has, in fact, became so familiar, that, as in the case of the term 'spy,' its mere annunciation carries with it a legal definition of crime."

I have the pleasure of knowing the Judge Advocate General well. He is a very able lawyer, and perhaps not surpassed for genius and eloquence by any man alive—certainly in forensic efforts there is no man living who, in my judgment, is equal to him; and those who have not heard him, have been deprived of what is a great intellectual treat. I can understand that his intelligence has exhausted that particular subject to which he refers, of the sufficiency of the charge against an accused that he is a guerrilla. But I do not find that he has given his opinion authoritatively on what is the real meaning of that term, nor to what kind of warfare it relates. I shall, therefore, look at other authorities in connection with that subject. Originally, we find from looking to history that an enemy was regarded as a criminal and an outlaw, who had forfeited all his rights, and whose life, liberty, and property were at the mercy of the conqueror. That was softened down from such rugged asperity by the advance of civilization and Christianity, but essentially the principle remains. The soldiers who surrounded Captain Beall on his way to this Court, and unknown to their superior officer, when the opportunity presents itself, murmur out in his hear-

ing words that would denote that he was contemplated by them as a murderer, an outcast, and a villian, have not brought themselves to understand, to contemplate the dreadful fact, that war is nothing but legalized deception, and fraud, and murder. If I slay my fellow-being upon a provocation or insult, if he should assail the reputation of my mother, or offer insult to my sister in my presence, and in a moment of passion I slay him, by the law of the land I am guilty of murder, although the circumstances might recommend me to the clemency of the Court. And yet, if in obedience to the call of my country I go against the phalanx of men who have done me no personal wrong, do not I always gain my military triumph by the massacre of those innocent men? If you march your battalions against the conscripted armies of the South, who suffer but the innocent? while the guilty leaders—the wicked men who set this rebellion on foot, have thus far escaped, and seem destined to escape, whatever may be the issue of the war. Soldiers like you are not to be horrified by the fact that men engaged in a warfare, who treat you, and consider you to be their enemies, take possession of your steamboats, or obstruct railroads, or endeavor to throw railroad trains off the track. It is very horrible to contemplate, when you look at it through the lens of ordinary society. A man who in times of peace lays obstacles upon the track for the purpose of throwing off a train in which there may be innocent women and children, not to speak of full-grown men, is regarded as a fiend. But has it not been a customary thing in this war, in all these expeditions called raids, for leaders to earn brilliant reputations by among other things tearing up rails, removing them, intercepting and stopping railroad cars, without reference to the question of who happened to be in them? Would a general officer, or any one in command, who sought to interrupt the communication by rail between two of the enemy's posts, let a train pass through or stop it? If he seeks to stop it he must apply to it the means necessary to accomplish it. Before the days of railroads, when soldiers were transported by means of animals attached to some kind of conveyance, did a General

engaged in warfare, who wanted to stop the soldiers, whether they were in stage-coaches (if soldiers ever travelled in that manner) or in caravans, ever stop to see how many innocent people would suffer by assailing them with weapons of destruction? Certainly not. It is death, desolation, mutilation, and massacre, that you are permitted to accomplish in war. And you look at it not through the medium of philanthropy, not through the Divine precept that tells you to love your neighbors as yourself, but through the melancholy necessity that characterizes the awful nature of war. You must change your whole intellect and moral nature to look at it as it is, the *ultima ratio regum*—the last necessity of kings. This being so, legalized war justifying every method, every horrible resource of interrupting communication, where do you draw the line of distinction between the act of one you call a guerrilla and the act of one you call a raider, like Grierson? Where do you make the distinction between the march of Major-General Sherman through the enemy's country. carrying ravage and desolation everywhere, destroying the most peaceable and lawful industry, mills and machinery, and every thing of that nature; where do you draw the line between his march through Georgia and an expedition of twenty men acting under commission who get into any of the States we claim to be in the Union, and commit depredations there? And what difference does it make if they act under commission, if they kill the innocent or the guilty? There are no distinctions of that kind in war. You kill your enemy; you put him *hors de combat* in any way, with some few qualifications that civilization has introduced. You may say it is not allowed to use poisoned weapons, and yet we use Greek fire. You may not poison wells, but you may destroy your enemy's property. Even Cicero, in his oration against Verres, when the question arose whether the sacred things were to be preserved in warfare, said: "No, even sacred things become profane when they belong to an enemy." Now, I don't perceive that this term "guerrilla" has been interpreted so fully as one would seem to think from a hasty glance at the Judge Advocate General's opinion to which I

have referred. At the outbreak of this war the Savannah privateers were captured; they were held and tried as pirates. I was one of the counsel for the accused. The jury in the city of New York disagreed. In Philadelphia they convicted some of them; and as the honorable members of this court remember, the Confederate Government proposed retaliation, and took an equal number of our men, their lot being determined by chance, and secured them, to be executed in case death were visited upon any of the privateers; and one of the men who was so held was Major Coggswell, who has just left this room; and for the first time in my life I had an involuntary client, because the life of my friend Coggswell was dependent upon the result. Very soon, however, the Government set aside that idea and gave up the notion that privateers were pirates.

You remember the case of the "Caroline," which occured in 1840, when the British Government sent its officers within our lines and took a steamboat from one of our citizens and set fire to it, and sent it over the Falls; and you remember the diplomatic controversy that arose, in which it was claimed by England that the principle of *respondeat superior* must apply; that it must be settled by the Government whose agents the perpetrators of that offense were. And although McLeod was tried in New York and escaped by the strange defense of proving himself a liar—by proving that he would not have done the things that he boasted he had done, the idea has not yet been removed that it was something to be settled in the international relations of the two Governments.

We see that there may be transactions which do not seem at the first flush to belong to those of war; and yet on a closer examination of them they prove to come within that description. I refer you to General Halleck's book, p. 306:

"Partisans and guerrilla troops are bands of men self-organized and self-controlled, who carry on war against the public enemy, without being under the direct authority of the State. They have no commissions or enlistments, nor are they enrolled as any part of the military force of the State; and the State is, therefore, only indirectly responsible for their acts. * * * If authorized and employed by the State, they become a portion of its troops,

and the State is as much responsible for their acts as for the acts of any other part of its army. They are no longer partisans and guerrillas in the proper sense of those terms, for they are no longer self-controlled, but carry on hostilities under the direction and authority of the State. * * * It will, however, readily be admitted, that the hostile acts of individuals, or of bands of men, without the authority or sanction of their own Government, are not legitimate acts of war, and, therefore, are punishable according to the nature or character of the offense committed."

If that be so, you cannot convict any man as a guerrilla who holds a commission in the service of the Confederate government, and perpetrates any act of war in that capacity. He is not self-organized with his command, nor self-controlled. He is acting under authority of our foe, and he is regarded as under so much protection as belongs to the law of war. If he has a commission, and do any thing which no man may do belonging to the army under any circumstances whatever, and commits offenses which military courts have cognizance of, they will take jurisdiction and award the punishment he deserves.

You will find that in this case Captain Beall was acting as an officer of the Confederate government, either in command himself of Confederate soldiers, or under the command of some Confederate officer, as in the attempt on the railroad where Colonel Martin of the Confederate service was in command. Commissioned officers of the Confederate government engaged in depredations for the purposes of war within our territory, are not guerrillas within this definition of General Halleck, or any definition recognized in any book that I have had occasion to refer to. So far as that definition and the like is concerned, that it is ratified by this Government, is shown from this proclamation of Jefferson Davis, referred to in specific terms, showing that it was done by authority of the Government. Now permit me, in this connection, to refer you to Phillimore on International Law, vol. 3, p. 137:

"If the unauthorized subject carry on war, or make captures, it may be an offense against the sovereignty of his *own* nation, but it is not a violation of international law. The legal position that no subject can lawfully commit hostilities, or capture property of an enemy, when his sovereign has either expressly or constructively

prohibited it, is unquestionable. But it appears to be equally unquestionable, that the sovereign may retractively ratify and validate the authorized act of his subject." He says on page 145: "Guerrillas are bands of marauders, acting without the authority of the sovereign or the order of the military commander. A class which, of course, does not include volunteer corps, which have been permitted to attach themselves to the army, and which act under the commands of the general of the army."

So that a guerrilla must be a marauder, self-controlled, not acting by the authority of his Government, without a commission—a mere self-willed and self-moving depredator. The question is, whether there is any proof of any such character in regard to Capt. Beall. As to the transaction on Lake Erie, I accept all the proof which has been given by the Government. It was an expedition to take possession of that steamboat, at a distance of some six miles from Johnson's Island, to *run down the United States armed Steamer Michigan,* then lying at about the distance of a mile from Johnson's Island, and thus give the prisoners on Johnson's Island an opportunity to escape.

The *Judge Advocate* said there was no evidence to prove that the purpose was to run down the *Michigan.*

Mr. Brady. Oh yes! you have proved the declarations of the parties engaged in it on board the boat, by Mr. Ashley. Ashley states expressly that that was the purpose.

THE COURT said that the witness said the object was stated to be to capture the *Michigan.*

Mr. Brady. That was the purpose of the armed expedition of Confederate soldiers or officers, to take possession of, or capture the *Michigan,* and thus aid to release the prisoners on Johnson's Island. That I call a military expedition; and that I call an expedition which being carried on by men under commission from the Confederate government, is legalized warfare and not the conduct of guerrillas. That, however, must be submitted to your judgment.

Now, what was undertaken at Niagara is proved here by no witness except Anderson. What the accused said to Mr. Thomas, within the rule that I have already announced, that the whole must be taken together and all believed unless it

conflicts with other proofs, has no relation to any such thing as this charge. When Capt. Beall was arrested by him, the Captain asked him for what he was arrested, and Thomas said in substance—I don't profess to give the very words—"You know as well as I do." And then it was stated that he was arrested as an escaped rebel prisoner; and Beall said, "From Point Lookout?" "Yes." "Well," says he, "I confess that I am an escaped prisoner from Point Lookout."

The records of this Government show, I presume, and therefore I am warranted in alluding to the fact, that Capt. Beall was a prisoner, and at Point Lookout, was taken by our forces and exchanged. In his conversation with Thomas he was acting the part of human nature. He wanted to be released if possible. He got the officer to suggest that he was an escaped prisoner; a thing involving no kind of turpitude or wrong, for every prisoner is entitled to escape, civil or criminal. It is the right of every man in society to escape the consequences of his actions; it is the right of society to punish him. But what is the proof? He did not say any thing to him except what I have already narrated. Now, who is Anderson? He is an accomplice. And what is the law as to accomplices? They are competent witnesses. They are often employed from the necessity of public justice. Their testimony, as an old writer says, is tolerated rather than approved. The act of turning traitor to your associate involves what we have regarded from boyhood as the meanest kind of perfidy. And although upon his testimony alone you can convict a party, it is always stated, and it is stated by McArthur on Court-Martials, that he must be corroborated in something tending directly to implicate him. There is the only proof. Now, what was the object of the capture of the express train? There is no person from the railroad to testify in regard to it. We don't know what happened to that train. Somebody went back with lights. We don't know whether any person was injured or not. Certainly according to Anderson's testimony there was no attempt made to take possession of any thing on board. I have not gone into any minutiæ of the testimony; it is not necessary. I shall not follow the

wanderings of the statements made by Weston and Hays, who come from the station-house, or as to the details of what was in this carpet-bag, holding it to be entirely immaterial who owned it. Andersan said it belonged to the accused, and the accused said it did not. There were candles. They said they were serviceable when they could not get any other light. There was a bottle of laudanum in the pocket of the accused, which he said was for the toothache. Whether he had the toothache, or intended to poison himself, does not concern us. He had a right to poison himself, except as between Capt. Beall and his Maker, or Capt. Beall and his Government; but it is wholly immaterial what that was for. And then as to the proof which my friend deemed it proper and necessary to give, to which I made no objection, emanating from this Hays, as to what occurred in the station-house; at the very worst, if Hays reported it accurately, it was an attempt to escape. What would either of you gentlemen do if you were captured by the enemy? Get away if you could. I know I was very much rejoiced when my friend, General Franklin, made his escape so adroitly. And whether the accused did or not offer $1,000 to this man, whom he immediately took into his confidence without any reason for bestowing that confidence; whether this man is correct in saying Capt. Beall, when he would not tell him his name, asked him to take his word for $1,000; all this does not bear upon this case. Now this escape, which in the law books is sometimes called flight, is sometimes given in evidence as a circumstance tending to fix crime. If a man should fall in the street, and should be discovered to be dead, and two or three others run away, and there are circumstances tending to prove that they murdered him, the fact that they run away is an item of evidence against them; but only an item of evidence. But in warfare if a man is taken prisoner and afterwards escapes, his escape is sometimes the most poetical transaction in his life; and his daring in getting away entitles him to as much glory as courage on the battle-field. We read it in romance and poetry, and it stirs our hearts as much as any thing in the record of battles.

Therefore, I think, we have two distinct questions here, and only two: Is the accused proved to be a spy? And is he found to be a guerrilla? What proof is there for the purpose of establishing these charges? In the one case we say he was shown to be within our lines, if within our lines at all, not for the purpose of acting as a spy, but for other developed and proved objects inconsistent with his being a spy. In the other case it appears that he was not a guerrilla because he was a commissioned officer in the Confederate service, acting under authority of that government during war, in connection with other military men, for an act of war. If so, then he is not amenable to this jurisdiction. If I were before a tribunal who had not been accustomed to look at war with its grim visage, with the eye of educated intelligence, I should apprehend that the natural detestation of violence and bloodshed and wrong would pursue this man. But however wrong the South may be—however dismal its records may remain in the contemplation of those who have the ideas of patriotism that reside in our minds—yet not one of you, gentlemen, would even be willing to acknowledge to any foreigner, hating our institutions, that you did not still cling to the South in this struggle, wrong and dreadful as it has been, and award them the attributes of intelligence and courage never before perhaps equalled, and certainly never surpassed, in the annals of the human race.

Bad as their acts may be in our contemplation, have you any doubt that in the conscience of that man, in the judgment of his mother, in the lessons he received from his father, he has what we may think the misfortune of believing himself right?

That mother and those sisters who are watching the course of this trial with their hearts bleeding every instant to think of the condition of the son and brother, who would not care if he should be shot down in one hour in open battle, contending for the principles which they, like him, have approved; if he were borne back to that mother like the Spartan son upon a shield, she would look at his corpse and feel that it was honored by the death he received. But she would be

humiliated to the last degree if she supposed that he had departed from the legitimate sphere of battle, and turned his eyes away from the teachings of civilization, and become a lawless depredator, and deserving and suffering ignominious death.

I leave his fate in your hands. I have endeavored to avoid any attempt to address to you any thing but what becomes the sober reason of intelligent men. There are occasions when the advocate may attempt, if he possesses any endowment of that nature, what is commonly called eloquence, what is known as oratory. But I never consider that in a court like this any address of that nature is appropriate in any sense or degree. This is a thing to be reasoned upon. You will view it through the medium of reason with which the Almighty has endowed you. And I think I may say to my client, that whatever conclusions this Court reaches, it will be that of honorable and intelligent gentlemen who would convict him, if at all, not because he is a southern officer, but because it is the imperious necessity of the law that they deem to be sufficient.

THE JUDGE ADVOCATE'S ADDRESS.

Major Bolles. Mr. President and Gentlemen of the Commission: It would be entirely improper, if it were at all possible, for me to imitate the example and follow the course of the eloquent counsel for the accused. He has a right to be eloquent. He could not help being so even if it were wrongful. I have no such right. He is the *advocate,* I am the *Judge* Advocate. It is my pleasant duty to represent, not one side but both sides of the case; absolute and entire justice; the law as it is, and as it affects the case; the facts as they are, and they affect the Government and the accused. It is the duty of the advocate for the accused to seek for his acquittal. It is never the duty of the Judge Advocate to seek for the conviction of the accused; but simply to take care that the facts and the law are spread before the Court and that strict justice be done.

In order that justice may be done in this case, I shall, before proceeding to the body of my address, ask the attention of the Court to one or two preliminary observations suggested by the remarks of the counsel for the accused.

No reference has been made by the prosecution, and none will be made, to any supposed connection of the accused with the November attempt to destroy the City of New York by fire, or with any other matter which is not described in the charges and specifications on which he is tried. The Court cannot, and would not, go beyond the case thus presented, and the evidence adduced by the prosecution.

Allusion has been made in the argument, but I must remind the Court that there is no fact in evidence to warrant any allusion, to the wealth, family, ancestry, and university education of the accused. These are matters quite outside of the case, and have nothing to do with the real inquiry before this tribunal.

Something was said of the accused, as appearing by government records, to have been at some time a prisoner of war at Point Lookout. But no such record is shown. The only evidence in the case that connects him with Point Lookout, is his false statement to policeman Thomas in December, that he had escaped a few days before from that place, in company with Anderson: whereas we prove him to have been at large in September, and to have been passing to and from Canada during the week of his arrest.

It has been argued to you that the accused is honorably devout, and of tender conscience; and appeals are made to his diary for proofs. What *shall* we, what *must* we, think of *his* conscience who within a fortnight of that atrocious attempt upon the railroad, could devoutly thank God, as he does in that diary, that he has never committed any outcrying sin.

You are asked to show some forbearance toward him on account of his hearty and conscientious belief that the cause in which he has been engaged, the rebel cause, is a righteous and just cause. But on page 11 of that diary, he states amongst his "consolations," that he never, of his own accord, left the

home circle of his mother and sisters,—"I never voluntarily left them." Such is his real relation, involuntary, to the rebel service. I cannot regard him, therefore, as a firm believer in the justice of the insurgent cause.

Two papers have been put in evidence by the accused without objection on my part: his letter of appointment as master's mate in the rebel navy, and the "manifesto" of Mr. Davis in regard to Burley and the Lake Erie expedition. I was willing to admit that Beall was a rebel officer, and that all he did was authorized by Mr. Davis; because, in my view of the case, all that was done by the accused, being in violation of the law of war, no commission, command, or manifesto could justify his acts. A soldier is bound to obey the lawful commands of his superior officer. Our 9th article of war punishes him for disobedience to such commands, but none other. His superior officer cannot require or compel any soldier to act as a spy, or as an assassin. If, then, such unlawful command be given and obeyed, its only effect is to prove that both he who gave and he who obeyed the command are criminals, and deserve to be gibbeted together. When did a spy ever seek to justify himself by pleading the command of his general? How can the manifesto of the arch-rebel screen any of his subordinates who has trampled under foot that law of war—for war hath its laws no less than peace—which is binding upon all alike, from the rebel president to the rebel raider?

In this connection I will read some extracts from the opinions of the Chief Justice of the Canadian Court of Queen's Bench and of his associates in the case of Burley, who was concerned, with the accused, in the seizure and plunder of the Lake Erie steamboats. The Chief Justice said:

"But, conceding that there is evidence that the prisoner was an officer in the Confederate service, and that he had the sanction of those who employed him to endeavor to capture the *Michigan*, and to release the prisoners on Johnson's Island, the manifesto put forward as a shield to protect the prisoner from personal responsibility does not extend to what he has actually done; nay, more, it absolutely prohibits a violation of neutral territory or of any rights

of neutrals. The prisoner, however, according to the testimony, was a leader in an expedition embarked surreptitiously from a neutral territory; his followers, with their weapons, found him within that territory, and proceeded thence to prosecute their enterprise, whatever it was, into the territory of the United States. Thus assuming their intentions to have been what was professed, they deprived the expedition of the character of lawful hostility, and the very commencement of their enterprise was a violation of neutral territory and contrary to the letter and spirit of the manifesto produced."

In the same case Judge Haggerty observed, that:

"Had this prisoner been arrested on the wharf in Detroit, as he stepped on the *Philo Parsons*, and avowed and proved his character of a Confederate officer, he would have been in imminent danger of the martial rule applicable to a disguised enemy. Had he been secretly joined there by twenty or thirty persons starting over from the neutral shores of Canada, and then by a sudden assault destroyed some national property, or seized a vessel lying at the wharf and taken the money from the unarmed crew, I think they would, if captured in the act, have great difficulty in maintaining their right to be treated as prisoners of war, with no further responsibility. In the Russian war, I think we should hardly have allowed such a mild character to a like number of Russians coming over stealthily from the friendly shores of Detroit to burn, slay, and plunder in Windsor. All the prisoner's conduct, while within our jurisdiction during this affair, repels the idea of legitimate warfare. A British subject, without the Queen's license and against her proclamation, in the service of one of the belligerents, acting in concert with persons leaving her ports on the false pretense of peaceful passengers, to wage war on a friendly power—no act of his raises any presumption in favor of his being in good faith a soldier or sailor waging war with his enemy."

Mr. Justice Wilson made use of the following language:

"The evidence returned to us shows, *prima facie*, that the prisoner committed a robbery in the State of Ohio, one of the United States. But it is answered, first, that the prisoner held a commission as Acting Master in the navy of the Confederate States. The holding of this or any other commission, does not authorize him, *mero motu*, to wage warfare from a neutral territory on the unoffending and non-belligerent subjects of the country at war with the nation whose commission he holds. He says he seized the *Philo Parsons* as an act of war, with intent to liberate the prisoners on Johnson's Island; but for this act he produces no order of any superior officer, and the evidence does not show that he had any such order. He says this robbery was at worst an excess of a belligerent right, which was merged in the principal act. Now, what was the prin-

cipal act of war performed? Under the pretense of being a passenger, he went on board a freight and passenger steamboat at Detroit. As a favor, he requested the master to touch at Sandwich, a British port, to take in three persons as passengers, which was done. The boat proceeded on its regular voyage to Amherstburgh, a town in this Province, near the mouth of the Detroit River, about fourteen miles below Sandwich. Here about twenty men, dressed in the ordinary attire of the farming people of the United States, with one rough trunk, tied round with a cord, and no other baggage, supposed to be citizens of the United States returning to their homes after an absence to escape the draft for the recruiting of the army of the United States, came on board the steamer. The prisoner and his three fellow-passengers affect no knowledge of the last twenty. The course of the vessel to Sandusky, from the mouth of the river, is southeast. She had to pass a number of islands. The northerly are British, the southerly American. The boundary line of this Province was north of the Bass Islands, and thence between Pele Island and Sandusky Island. Johnson's Island is said to be fourteen miles from the Middle Bass Island, and two miles from Sandusky. Nothing occurred to excite suspicion, or cause alarm, until the boat was clearly within the territory of the United States. Suddenly, the prisoner presented a revolver at Ashley, and drove him, at peril of his life, into the ladies' cabin. Beall, one of his confederates, overcame the mate in a similar manner. The other twenty, more or less, rushed to their trunk, armed themselves with revolvers and hatchets which it contained, acted under the orders of Beall and the prisoner, and the boat became at once under their control. So far, neither of the leaders declares his reason for this proceeding. It was rumored that their object was to liberate the prisoners at Johnson's Island. After some hours, the boat landed at the Middle Bass Island, having taken possession of a small steamboat, the *Island Queen*. At this island, just before Ashley was put on shore, Beall and the prisoner, with revolvers to enforce the command, demanded his money. After getting what was in his drawer, the prisoner insists he has more, and Ashley took from his waistcoat pocket a roll of bills, about $90 he supposes, which the prisoner and Beall share between them. These proceedings, so mean in their inception, and so ignoble in their development and termination, we are asked to consider as acts of war, and to accord to the prisoner belligerent rights. What is there in all this which constitutes the act of war? If the object were to release the prisoners, from all that appears they never were nearer than fourteen miles to Johnson's Island. Was the seizure of this unarmed boat *per se* an act of war? for it has been argued that the robbery was merged in the higher act. The seizure of the boat, for whatever purpose, was one thing, the robbery of Ashley quite another, and in no way that we see, in furtherance of the design now insisted upon, necessary for its accomplishment. But is not the *bona fides* of the enterprise matter of defense which a jury ought to try? Such a trial can only be had

where the offense was committed, and we cannot doubt but that justice will be fairly administered.

"Then we are told that although the prisoner has no orders to show authorizing what he did, he has the manifesto of the President of the Confederate States, avowing the act and assuming it, and therefore he is not subject to this charge at all. We accord to that Confederacy the rights of a belligerent, as the United States has done from the day it treated the soldiers of the revolted States as prisoners of war; but there is an obvious distinction between an order to do a belligerent act and the recognition and avowal of such an act after it has been done. The one is an act of war, the other an act of an established government. The one is consistent with what Great Britain acknowledges, the other is not. For as judicially to give effect to the avowal and adoption of this act would be to recognize the existence of the nationality of the Confederate States, which at present our Government refuses to acknowledge.

"Giving for the moment this manifesto its full force, it distinctly disclaims all breaches of neutrality; but it is clear that this expedition took its departure and shipped its arms from our port. But does it assume the responsibility of this seizure and all that was done upon it throughout? If not, it is neither justification nor excuse. I see no authority for the doing of the act, and as an assumption of what was done, therefore, the whole justification fails.

"The attitude of the United States towards us is no concern of ours. Sitting here, whatever they do, while peace exists and this treaty is in force, we are bound to give it effect. We can look with no favor on treachery and fraud, we cannot countenance warfare to be carried on except on the principles of modern civilization. We must not permit, with the sanction of law, our neutral rights to be invaded, our territory made the base of warlike operations, or the refuge from flagrant crimes. Peace is the rule, war the exception of modern times; equivocal acts must be taken most strongly against those who, under pretense of war, commit them. For these reasons I think the prisoner must be remanded on the warrant of the learned Recorder."

Mr. Davis' manifesto in terms forbids all violations of neutral rights, and proposes to ratify only "a proper and legitimate belligerent operation," to wit, the capture of the United States armed steamer *Michigan,* and the release of rebel prisoners at Johnston's Island.

But whatever had been its language, the manifesto could not have justified any violation of the laws of war committed for the sake of accomplishing "a proper and legitimate belligerent operation," such as robbing, stealing, and plundering in disguise; and, as matter of fact, the acts of the ac-

cused had no reference to that "operation," not one particle of proof is in the case that any design was formed, or effort made, by the plunderers of the *Philo Parsons* and *Island Queen* to effect that "operation."

You have been asked to reject as unworthy of credit the testimony of George Anderson, in regard to the outrage near Buffalo, because he was an accomplice; and it has been said that the laws regard such evidence with suspicion. There is no arbitrary rule of law on this subject. According to *Benet's Military Law,* pp. 242, 243, you are at liberty to believe or disbelief the testimony of an accomplice according to your own convictions; and upon his testimony, with or without corroboration, you may convict the accused.

The rule of law is equally reasonable in regard to the admissions of the accused, oral or written. If the prosecution puts in a part, it must put in the whole; but when such evidence is actually before you—so says *Benet,* p. 264—it rests with you to either believe or disbelieve either the whole or a part. If, then, you look at the letter of the accused to Mr. Lucas, and find that it describes the accused as an officer in the rebel navy, you may believe it; and if you find it asserting "you know that I am not a guerrillero or a spy," you may believe, or disbelieve that the accused so thinks. But you will never commit the error of supposing that what he asserts on that point is any thing more than his opinion; and upon the same facts which led the accused to that mistaken opinion, you may be compelled by the law and the evidence to find him guilty.

At this stage of the case, as well as at any time, I may answer the remarks of the learned counsel upon the legitimate scope and meaning of the phrase "within our lines." He has quoted an Act of Congress, which, as he thinks, and thinks correctly, punishes spies that are found in the insurgent States, and he has also referred to the later Act which punishes them wherever found; an Act into which the word "elsewhere" was introduced for the purpose of covering all possible cases; and yet he is anxious to have your definition of the words "within our lines." Those words do

not appear in this case in charge, specification, or evidence. But there can be no doubt of their meaning in the military mind. Every man is within our lines who enters a loyal State by sea or land, with hostile purposes. Any rebel emissary who has first violated the rights of Canadian neutrality, and then in the guise of a peaceful citizen crossed into our territory, along the whole northern frontier of which are military posts and garrisons, is within our lines; and if he be a rebel officer or soldier, the law pronounces him to be a spy; and unless he can prove that he is not, he will be hung as a spy just as certainly as he is caught and brought to trial.—*Judge Advocate Holt's Digest,* p. 127.

"Within our lines," means any spot within the loyal States where an enemy could do us a mischief, be it the Lake Shore Railroad, where the accused attempted his last enterprise, or the City of New York, in which the November incendiaries endeavored to destroy the commercial metropolis of the country, or Boston or Portland Harbor, into which rebel pirates or privateers might seek entrance, or a traitor spy might try to pilot them. There is no shore or border so remote that it is not now within our lines, and lines that bristle everywhere with bayonets, and frown everywhere with forts and cannon. The phrase "within our lines" is as comprehensive as is the word "elsewhere" in the Act of Congress of March 3, 1863, sec. 38, as given on page 542 of the Revised Army Regulation, which provides that "All persons who in time of war or of rebellion against the supreme authority of the United States, shall be found lurking, or *acting* as spies, in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States or *elsewhere,* shall be triable by a general court-martial, or military commission, and shall, upon conviction, suffer death."

The section thus quoted, I beg leave to say, shows that a spy, whoever he may be, and wherever found within the broad limits of the United States, "lurking or acting," is amenable to a military commission like the Court which I now have the honor to address, as well as to a court-martial;

and thus furnish an answer to that question of jurisdiction which was raised by the accused, and which his counsel suggested in the beginning of his address as the first proposition of his client's, and not as his own.

There can be no doubt upon this question of jurisdiction. It is true, as was decided by the Judge Advocate General on p. 79 of *Holt's Digest,* cited by Mr. Brady, that a military commission cannot lawfully be clothed with power "in all cases civil and criminal, and in equity."

But the same authority, on the same page, has decided that "many offenses which in time of peace are civil offenses, become in time of war military offenses, and are to be tried by a military tribunal, even in places where civil tribunals exist."

Major General Halleck, who is himself, as the counsel for the accused admits, of great authority in matters of public law, proclaimed the same doctrine in his celebrated Missouri Order, No. 1, quoted by *Benet,* p. 15.

Will the Court permit me here to answer the claim set up by the accused to be tried by a jury for the crimes now charged against him in connection with the seizure of the steamboats and the attempt upon the train of cars? It is true that if these enormities had been committed in time of peace, or by ordinary citizens, rogues, and desperadoes, they would have been mere municipal or civil offenses, and the perpetrators would be amenable to the civil courts and entitled to the trial by jury. But the accused is not prosecuted for a civil offense. He is, by the theory of this case, a military offender, a violator of the law of war.

Mr. Brady himself admits, and quotes *Holt's Digest,* p. 79, par. 16, to show that murder, which is a civil offense under ordinary circumstances, may and does, in time of war, when committed for disloyal and treasonable purposes, become a military offense, and may then be tried by a military court, without the interposition of a jury. In time of war, the offender being a rebel officer in disguise, the question of intent, the *quo animo,* is very easily determined. In this case it is very clear that personal advantage was not the motive that

led to the seizure of the steamboats, or the attempt on the railroad. To destroy the commerce of the lakes was one of the objects avowed by the raiding party on Lake Erie; to inflict great injury upon great numbers of their Yankee enemies, and not the crazy expectation that a gang of five rebels could overcome and plunder a thousand passengers, was the purpose of the railroad attack.

The acts charged and specified being military offenses are triable by a military court, and the accused has no constitutional right to a jury trial.

Says the Judge Advocate General (Digest p. 77-80):

"The amendment of the Constitution, which gives the right of trial by jury to persons held to answer for capital or otherwise infamous crimes—except when arising in the land or naval forces—is often referred to as conclusive against the jurisdiction of military courts, over such offenses when committed by citizens. But, though the letter of the article would give force to such an argument, yet in construing the different parts of the Constitution together, such a literal interpretation of the amendment must be held to give way before the necessity for an efficient exercise of the *war powers* which is vested in Congress by that instrument. A striking illustration of the recognition of this principle by the legislation of the country since an early period of our history is furnished by the 57th Article of War, in the fact that it has, from the beginning, rendered amenable to trial by court-martial for certain offenses" (holding correspondence with or giving intelligence to the enemy), "not only military persons, but all persons whatsoever."

I will add, that by the act of Congress of 1806 in regard to *spies,* the same jurisdiction of courts-martial was extended to that class of offenders, that they might suffer death "according to the law and usage of nations."

If *citizens* may thus be subjected to trial by such courts, *a fortiori,* may *enemies* and armed rebels be deprived of the trial by jury.

Pending a war like this, not less than in all ordinary wars, that branch of the law of nations of which Congress speaks in the act of 1806, already quoted, as "the law and usage of nations" in regard to spies, *i. e.,* "the law of war;" that law of war exists and takes effect everywhere within the territory of the belligerents, and everywhere by the instrumentality of

military tribunals, and without a jury, punishes every offense against natural right and justice which is committed by soldiers or citizens, for disloyal and treasonable purposes.

The accused, not his counsel, is of the opinion, as Mr. Brady informs us, that the 1st charge does not set forth with sufficient particularity the offense alleged against him. By the well-settled rule of law, the charge is always thus brief and general.

The Judge Advocate General (*Digest*, p. 66) has decided that the charge of "being a guerrilla" is sufficient. It is in the specification which follows the charge, that the circumstances constituting the offense, and describing its perpetration, are to be fully and clearly set forth. *DeHart*, p. 145. *Benet*, p. 52.

Neither the accused nor his counsel can complain that the specifications under the 1st charge are not sufficiently explicit.

I come now, Mr. President, to the inquiry, what are the true legal character and definition of the offenses with which the accused stands charged? I. What is it, in law, to be a spy, and do the facts proved come up to the legal requirements? II. What is it, in law, to carry on irregular warfare, and has the accused been found guilty of this?

I. The learned counsel for the accused is dissatisfied with every definition of a spy that is comprehensive enough to cover the case on trial; and is a little inconsistent in the matter. Bouvier, in his Law Dictionary, defines a spy to be "*one who goes into a place for the purpose of ascertaining the best way of doing an injury there.*"

Why is not the counsel for the accused content with that? The accused was an enemy, who came with hostile intent into both Ohio and New York, to ascertain the best way of injuring their peaceable and unsuspecting inhabitants. Bailey, in his dictionary, presents a definition which almost seems to satisfy the counsel for the accused. According to that venerable lexicographer a spy is one who "clandestinely searches into the state of places and

affairs." The accused came aboard the *Philo Parsons* clandestinely, with the heart and hate of an enemy, but in the dress and with the profession of a friend; so did he clandestinely enter the *Island Queen;* so did he clandestinely visit Buffalo. Deception, disguise, concealment, falsehood, stamp their guilty image and superscription on all his acts, and on all his declarations. His dress belies and disguises his real character. If André in unifrom was rightly held to be in disguise because of his citizen's overcoat, is Beall not disguised when clad as a citizen throughout, from hat or cap to boots? His story to officer Thomas was a tissue of falsehoods, for he denied his real name and assumed another; he asserted that he was in the rebel infantry, and not in any other branch of the service, when he *was* a *naval,* and was *not* a *military* officer; his account of his recent escape with Anderson from Point Lookout, and all its details, was untrue. Do I say that his dress disguises his real character? It did so at the time of his coming within our lines; but now every disguise is a proof, an exposure, a demonstration, of his genuine character, because he is a spy.

The counsel for the accused believes that Major André was a spy. He also believes that Davis, whose case I do not remember, was properly held to be a spy. According to Mr. Brady's statement, Davis was a rebel officer who was on his way from Canada to the South, carrying despatches, and proceeding without delay through the intervening loyal States, holding communication with no one on his way. According to this admission the true definition of spy includes a class of men who come within the limits of the loyal States from a neutral and friendly territory, not to obtain information, but simply to cross our territory as errand boys, carrying papers which contain information.

Is the learned counsel quite consistent, then, when he goes on to quote as entirely satisfactory to him, Maj. Gen. Halleck's definitiion of a spy; a definition which requires that the spy should have come within our limits not only to *make*

discoveries, but "to *communicate* to their employers the information thus obtained?"

This definition does not cover the case of Davis; nor does it cover the case of those who come of their own accord and have no employer; nor of those who are directed, or are determined, to act on the information they gather, instead of communicating it to any one. Gen. Halleck himself very properly says, that "it is the disguise or false pretense which constitutes the perfidy and *forms the essential element of the crime.*"

It is very clearly immaterial whether the spy comes as principal or agent, to get information for his own guidance or that of others, or whether the information is to be communicated, or to be retained and acted on without communication or consultation; and the true definition of a spy would include any man who comes in disguise, or clandestinely, into his enemy's territory, to obtain and use or to obtain and transmit information with hostile intent; or who, being within that territory, treacherously seeks information to be used by himself or others for hostile purposes.

In the General Orders of the War Department, No. 100 (April 24, 1863), paragraph 88, it is said that "a spy is a person who secretly, in disguise or under false pretenses, seeks information with the intention of communicating it to the enemy." If to this definition had been added the words "*or of using it as an enemy,*" it would, I think, have been exact and all comprehensive.

But why linger and dwell in dictionaries and definitions, when, so far as this case is concerned, the legal character of the accused as a spy is settled by authority beyond all question?

The learned Dr. Lieber, in his letter on Guerrilla parties, thus states the law: "*A person proved to be a regular soldier of the enemy's army, found in citizen's dress, within the lines of the captor, is universally dealt with as a spy.*" The learned Judge Advocate General, at the head of our Bureau of Military Justice, has again and again decided that *the*

fact that "an officer or soldier of the rebel army comes within our lines disguised in the dress of a citizen, is PRIMA FACIA *evidence of his being a spy," and that "the disguise so assumed strips him of all claim to be treated as a prisoner of war."* (*Digest,* p. 127.) It is true, as the Judge Advocate further says: "that such evidence may be rebutted by proof that he had come within the lines to visit his family, and not for the purpose of obtaining information as a spy." (*Digest,* p. 127.) "It is also true, that if the spy succeeds in making his escape the crime does not follow him; and if he be subsequently captured *in battle,* he cannot be tried for it." (*Digest,* p. 127.)

2. The second branch of this first inquiry is now to be considered, viz.: what are the facts proved to which those rules of law are to be applied?

It is proved and admitted that the accused was in the military and naval service of the rebel authorities. He produces his warrant as Master's Mate in the navy; he told officer Thomas that he was an infantry officer; his counsel contends that in the railroad enterprise he was serving under Col. Martin.

It is proved, in the second place, that he came three several times, in the disguise of a citizen, from Canada to Ohio and New York; *first,* as a passenger in the steamer *Philo Parsons; next,* as a railroad operator, when the brave party of four, Martin, Headley, Beall, and Anderson, attempted in vain to lift a rail from the track; and *finally,* when that heroic band, enlarged by one new recruit, and refreshed by two nights of sleep at Port Colborn, returned upon their chivalric errand, and attacked the Dunkirk train.

If, as the counsel for the accused argues, the statement of Anderson the accompilce in this railroad enterprise, is not to be believed—and all that you know in regard to the accused in New York, are the facts sworn to by Thomas, who arrested him—that he was in disguise, that he gave a false name, and that he made divers untrue statements in regard to himself; then is his character as a spy still more strongly proved, ac-

cording to Mr. Brady, because he is here, a rebel officer, in disguise, practising deception, and without any assigned pretext or excuse.

Are these two facts and the legal conclusion therefrom, met by any explanation, by any rebutting testimony?

Has any evidence been offered to change this fatal *prima facies* of the case? The accused came to Ohio, says Mr. Brady, to perform a belligerent act. Unfortunately there is no such proof. He *might*, says Mr. Brady, have come to Ohio, and to New York on some innocent errand, or some errand of humanity. He *might*, indeed. But where is the proof that he *did?* Has he purged himself of his criminality as a spy in Ohio or New York? Has he, in the language of the authorities which I have read, returned to the belligerent army, or to the navy in which he holds rank, and been captured in battle? This is not even claimed or argued. He *did* go back to Canada, whose neutral rights he had violated, in September. He *did* attempt to go back to Canada in December. But he did not return to the insurgent States, nor was he taken prisoner in lawful or honorable warfare. Now, Mr. President and gentlemen of the Commission, I do *not* ask you to set aside, but I *do* ask you not to enlarge or to disregard the narrow limits of that rule of law which discharges from guilt a spy who, having returned to the field of legitimate warfare, has been captured on the field of battle. This rule is arbitrary. It is an exception to the general rule of civilized war, which inflicts ignominous death on all who violate its humane regulations by acts of perfidy, baseness, and treacherous hostility. It is your duty to see that this exception is not enlarged.

II. I now proceed, may it please the Court, to the inquiry as to the law and the evidence in support of specifications 1st, 2d, and 6th, under Charge I. As matter of law, do the facts alleged in these specifications constitute violations of the laws of civilized warfare, and, as matter of fact, are those allegations proved?

I shall not spend much time in answering what was so

ingeniously argued by the learned counsel in regard to the legal meaning of the word *guerrilla.* That word occurs only in the 6th specification, and is there quite immaterial—mere surplusage—and might be stricken out and leave that specification as complete as are the 1st and 2d specifications.

I might admit, for the purpose of argument, that if the word guerrilla had now, and in our service, the same significance which belonged to it at the time when Gen. Halleck published, in San Francisco, his work on International Law, there would be weight as well as ingenuity in Mr. Brady's argument; though even then I should ask you merely to omit the word in your finding of guilty on the 6th specification. But, as the Judge Advocate General (*Digest,* p. 66) informs us, this word guerrilla, during this unhappy war, has acquired a peculiar and well-settled meaning, so that it is as idle to go back to Gen. Halleck, or the old dictionaries or treatises, for its present significancy, as it would be to go back to Cicero for the laws of modern warfare.

If the evidence in this case shows that the accused engaged in hostile acts which are forbidden by the law of war, you may call him brigand or raider, guerrilla or guerrillero, prowler or robber, he is still amenable to this Court, whatever may have been said by writers of a former and less civilized period. We do not go back to Cicero, nor even so far as Pufendorf, Bynkershoeck, or Grotius, to discover precisely what is now the law of war. We may go back to our Divine Master and His teachings in Judea, to discover the pure fountains of that law of love which has now found its way into the very code of war, and we may thence follow downward to our own day the course of Christianity in its influence upon Government, social institutions, and rules of civil conduct, and at last discover what are to-day the rules of civilized warfare. And in that code, as it now exists, we shall learn that warriors are not allowed to lay aside their uniforms, and the badges of their profession, to assume the disguise of peaceful citizens, to creep insidiously into the midst of peaceful and unsuspicious communities, and assassinate leading individuals, set fire at night to crowded

theatres and hotels, or lay obstructions across railroads, and hurl men, women, and children indiscriminately to destruction; and that for atrocities and infamous attempts of this description, no command, no commission, no public manifesto, can be pleaded or proved in justification, extenuation, or mitigation.

President Woolsey, in his *Introduction to the Study of International Law* (2d Ed., p. 214) observes, that among the rules which lie at the basis of a humane system of war, is the rule that "war is waged between Governments by persons whom they authorize, and is not waged *against the passive inhabitants of a country.*"

And, as he says, the reasons why "guerrilla parties do not enjoy the full benefit of the laws of war, are, that they are annoying and insidious, that they put on and off with ease the character of a soldier, and that they are prone themselves to treat their enemies who fall into their hands with great severity."

In the enunciation of these humane doctrines all the recent text writers on public law are in harmony. But there is no work in existence devoted specially to the subject of irregular warfare, except the little treatise of Dr. Lieber, from which I have already quoted in speaking on the subject of spies, and from which I beg leave now to read a few passages that bear upon this second branch of the case on trial:

"There are cases in which the absence of a uniform may be taken as very serious *prima facie* evidence against an armed prowler or marauder." * * * "It makes a great difference whether the absence of uniform is used for the purpose of concealment or disguise in order to get by stealth within the lines of the invader for the destruction of life or property, or for pillage"— * * * "nor can it be maintained in good faith, or with any respect for sound sense and judgment, that an individual—an armed prowler —shall be entitled to the protection of the laws of war— * * * because his government or chief has issued a proclamation by which he calls upon the people to infest the bushes and commit homicides which every civilized nation will consider murders." (Pp. 16, 17.) "The armed prowler is a simple assassin, and will thus always be considered by soldiers and citizens." (P. 20.) "Armed bands that rise in the rear of an army are universally considered, if captured, brigands, and not prisoners of war. They unite the fourfold char-

acter of the spy, the brigand, the assassin, and the rebel, and cannot expect to be treated as a fair enemy of the regular war." (Pp. 20, 21.) "No army, no society, engaged in war— * * * can allow unpunished assassinations, robbery, and devastation, without the deepest injury to itself, and disastrous consequences, which might change the very issue of the war." (P. 22.)

I have received from Dr. Lieber, and now propose to read as an authoritative exposition of the law which is to control this part of the case, a letter addressed to myself, and bearing date New York, February 5th, 1865:

"DEAR SIR: There is no work which treats in a clear and full manner like a law book, on spies, and so-called guerrillas, nor on the law and usages of war in general. In no war previous to our present one have these subjects received that minute and candid attention which we give them, although this is a war of a lawful government with insurgents. Nowhere have the spy and guerilla been treated of more distinctly than in my pamphlet on 'Guerrilla Parties,' which the Government printed, and of which I would send you a copy had I one, and also of General Orders No. 100 (year 1863). I must say, however, that in my interleaved copy of this order I have added to § 88 'Enemies found in disguise or concealed, or lurking near the army, are by these facts deemed to be spies except they can prove that they are prisoners of war in the act of escaping?' I should certainly propose to add this were I consulted as to a new edition. I ought also to have given something on *enemies who in disguise come from the territory of a neutral to commit robbery or murder*, and those who may come from such territory in uniform. *I don't believe that such people, now called by the unacceptable term* RAIDERS, *have ever been treated of by any writer.* The thing created no doubt in the mind of any one. *They have always been treated as brigands, and it can easily be shown upon principle that they cannot be treated otherwise. Never, so* long as men have warred with one another—and that is pretty much as long as there have existed sufficient numbers to do so—*has any belligerent been insolent enough to claim the protection of the laws of war for banditti who take passage on board a vessel, and then rise upon the captain and crew, or who gather in the territory of a friendly* person, steal in disguise into the country of their enemy, and there commit murder or robbery. The insolence —I use the term now in a scientific meaning—the absurdity, and reckless disregard of honor, which characterize this proceeding, fairly stagger a jurist or a student of history. * * *

"Your obedient servant, FRANCIS LIEBER."

This, gentlemen of the Commission, is the voice of the law speaking from the lips of the living jurist—of that learned

and eminent juris-consult whom our Government, in the beginning of 1863, saw fit first to consult and then to employ in drafting that manual of "Instructions for the Government of Armies of the United States in the Field," which, having been "approved by the President," became the will of the War Department, and was published as that "General Order No. 100," from which I have already quoted in the course of my argument.

With one reference to that order, from which I now read paragraph 101, I will close my citation of the authorities which determine the law applicable to the case now on trial:

"101. While deception in war is admitted as a just and necessary means of hostility, and is consistent with honorable warfare, the common law of war allows even capital punishment for clandestine or treacherous attempts to injure an enemy, because they are so dangerous, and it is so difficult to guard against them."

Reference was made by the counsel for the accused to the trials in New York and Philadelphia, upon the charge of piracy, of certain rebel privateersmen. Let me remind this Court, that in those cases the civil judge, as a matter of law, determined that the parties thus tried, though sheltered by a rebel commission, were pirates. It was executive policy, and not the law, which led to their exchange as prisoners of war.

The case of the steamer *Caroline* and the Canadian McLeod, to which Mr. Brady has alluded, can shed no light upon the present trial. England and the United States were friendly, not belligerent powers, and those border difficulties were adjusted without recourse to the laws of war.

And now, Mr. President, I come to the final inquiry in this most interesting and important trial. What are the facts proved by the evidence under the 1st, 2d, and 6th Specifications of Charge 1st?

I submit to the Court that we have proved, 1st. That the accused was and is a rebel officer. 2d. That he was within our lines in disguise. 3d. That he, at Kelly's Island, in Ohio, in September last, with the help of other rebel officers and soldiers in disguise, seized the American private

steamboat *Philo Parson.* 4th. That he stole the money and destroyed the freight on board of her. 5th. That in September, at Middle Bass Island, in Ohio, he, still in disguise, and with the same friends in disguise, seized in like manner another steamboat, the *Island Queen,* and scuttled and sunk her. 6th. That in December he came from Canada to Buffalo, in New York, in disguise, and with other disguised rebel officers and soldiers attempted unsuccessfully to throw a railroad train from the track. 7th. That he went back to Canada, and again returned in the same treacherous manner as before, and repeated his infamous attempt upon a night train from Dunkirk, and was caught as he fled from the scene of his unenviable exploits.

The evidence upon these points is not contradicted, and admits of no denial or doubt. I respectfully submit to the Court that the acts thus proved, having been done within our lines by rebel enemies in disguise, upon the persons and property of peaceable, unoffending, unsuspicious citizens, are acts of irregular warfare—call them raiding, brigandage, robbery, theft, piracy, plunder, murder, or assassination—are offenses against the laws of God and the laws of man, against municipal law and the laws of war, and may be tried and punished by either municipal courts of civil jurisdiction, by court-martial, or by military commission. They are brought before you for trial. Yours is a rightful jurisdiction. Upon you devolves the solemn duty of determining the issues in this case, which, to the accused, are the dread issues of life and death.

I have felt, Mr. President and gentlemen, oppressed, as I know you all must feel, with the terrible responsibility imposed upon me, and upon you, by the facts and the law in this case. But it is not a matter in which the dread of responsibility must be allowed to influence either your action or mine. It is important that you and I, sir, and our wives and children—that all of our fellow-citizens, may feel when they enter a railroad car within the loyal States that they are safe from all perils but those of ordinary travel; and that if

any party of rebel soldiers in disguise, enemies of the Republic and friends of the Confederacy, attempt to place obstructions on the track, and throw off the train, they will be punished with the most exemplary speed, certainty, and severity. Enormities like this cannot be justified or screened from legal vengeance by the plea or proof of a military commission, command, or ratification, no matter how exalted may be the rank of the commander; since the law of war, which forbids and punishes the crime, is obligatory upon all.

It must have been apparent to you, gentlemen of the Commission, that in the conduct of the defense the accused was utterly embarrassed, perplexed, and at a loss to know how to protect himself; and that he was compelled to resort to two distinct, incongruous, and contradictory lines of defense: at one time seeking to escape from the jurisdiction of this Court by treating his acts as mere civil offenses; and at another time claiming the protection of the laws of war as a legitimate and regular belligerent, acting in obedience to the lawful commands of his superior officers. Neither of these lines of defense, I respectfully submit, can stand for one moment against the charge and pressure of the law and the facts.

The accused, knowing the terrible risk he assumed, knowing the peril under which he acted, entered upon a scheme of illegal warfare upon the lake and upon the land. Some one on board the captured steamers uttered the foolish assertion, that with the stolen boats they meant to capture the U. S. armed steamer *Michigan*. Every movement of those captured boats proves the falsehood of that pretense. Not one single mile, not a rod, not an inch, did either of those vessels move under rebel direction toward the ship of war.

An act of lawful war! Seizing two passenger steamers, robbing the clerk, throwing overboard the freight, committing the crimes of pirates and of thieves, and not moving one barley corn of distance toward what it pretended to be the object and end of their warlike enterprise! Such a case does not admit of argument.

And so in regard to the defense of that scandalous attempt upon the train—that it was a simple attempt at robbery, and a mere civil offense, on the part of this "*humane and conscientious*" prisoner and his worthy associates, who with a force of five men, armed with five revolvers, a sledge-hammer, and a cold chisel, expected to capture a train of fifteen cars and fifteen hundred passengers, and to plunder the express-man's iron safe! It is a glaring absurdity. Why, sir, the moment the train halted and they saw the approach of three or four lanterns, this squad of express robbers jumped into their sleigh and fled for the Canada border!

All the evidence in this case, may it please the Court, tends to show that the accused was part and parcel of a wide-spread scheme of unlawful and irregular warfare along our whole Canadian line; whose purpose was, in any way and in every way, except by open and honorable hostility, to endanger the lives, destroy the property, and weaken the strength of those Yankee citizens whom these brigands of the border so bitterly hate.

The piracy of the lake, and the outrage on the railroad, were parts of that system of irregular warfare, under the fear of which no man, woman, or child can sleep with any feeling of security in our midst. Such atrocities are attempts, on the part of the rebel officers and soldiers who engage in and countenance them, to bring back war to its old condition of barbarism—to imitate the stealthy cruelty of the North American savage, who creeps under cover of midnight upon his unsuspecting victim, and smites him to death ere the sound of approaching footsteps has aroused that victim from slumber. With the accused this savage purpose takes form in the robbery of steamboats and the destruction of railroad trains and travellers. In other hands, it manifests itself in midnight attempts to burn great cities. There is nothing of Christian civilization, nothing of regular warfare, nothing of a high, noble, bold, manly, chivalrous character about it. It is an outbreak of passions so bad and violent that they have overcome all the native elements of

manliness, and have led men, of whom four years ago to have suspected of such things possible would have been a calumny and a crime, to indulge in atrocities from month to month and year to year, such as have not stained the pages of warfare for two hundred years. And you sit here to-day, and I stand here to-day, as the representatives of recognized law and honorable warfare, to see that such outrages, when they are clearly and distinctly brought home to the guilty party by the evidence adduced upon the trial, shall not escape unpunished.

THE VERDICT, SENTENCE AND EXECUTION.

February 8.

The COMMISSION after a consideration of the evidence adduced find as follows on the charges and specifications:

Of Specification 1, Charge I., Guilty.
Of Specification 2, Charge I., Guilty.
Of Specification 3, Charge I., Guilty.
Of Specification 4, Charge I., Guilty.
Of Specification 5, Charge I., Guilty.
Of Specification 6, Charge I., Guilty.
Of CHARGE I, Guilty.
On Specification 1, Charge II, Guilty.
On Specification 2, Charge B, Guilty.
On Specification 3, Charge B, Not guilty on the day alleged.
On CHARGE II, Guilty.

And the Commission do therefore sentence him, the said John Y. Beall to be hanged by the neck until dead, at such time and place as the General in command of the Department may direct, two-thirds of the members concurring therein.

Major General Dix affirmed the findings and sentence. After reviewing the evidence he said:

"In all the transactions with which he was implicated—in one as a chief, and in the others as a subordinate agent—he was not only acting the part of a spy, in procuring information to be used for hostile purposes, but he was also committing acts condemned by the common judgment and the common conscience of all civilized States, except when done in open warfare by avowed enemies. Throughout these transactions, he was not only in disguise, but personating a false character. Is it not at all essential to the pur-

pose of sustaining the finding of the Commission, and yet it is not inappropriate to state, as an indication of the *animus* of the accused and his condefedates, that the attempts to throw the railroad train off the track were made at night, when the obstruction would be less likely than in the daytime to be noticed by the engineer or conductor, thus putting in peril the lives of hundreds of men, women, and children. In these attempts three officers holding commissions in the military service of the insurgent States were concerned. The accused is shown by the testimony to be a man of education and refinement, and it is difficult to account for his agency in transactions so abhorrent to the moral sense, and so inconsistent with all the rules of honorable warfare.

"The accused, in justification of the transaction on Lake Erie, produced the manifesto of Jefferson Davis, assuming the responsibility of the act, and declaring that it was done by his authority. It is hardly necessary to say that no such assumption can sanction an act not warranted by the laws of civilized warfare. If Mr. Davis were at the head of an independent government, recognized as such by other nations, he would have no power to sanction what the usages of civilized states have condemned. The Government of the United States, from a desire to mitigate the asperities of war, has given to the insurgents of the South the benefit of the rules which govern sovereign States in the conduct of hostilities with each other; and any violation of those rules should, for the sake of good order here, and the cause of humanity throughout the world, be visited with the severest penalty. War, under its mildest aspects, is the heaviest calamity that can befall our race; and he who, in a spirit of revenge, or with lawless violence, transcends the limits to which it is restricted by the common behest of all Christian communities, should receive the punishment which the common voice has declared to be due to the crime. The Major General commanding feels that a want of firmness and inflexibility, on his part, in executing the sentence of death in such a case, would be an offense against the outraged civilization and humanity of the age.

Beall was hanged at Governor's Island, N. Y., on Friday, February 24, 1865.

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